

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3 Barry Lee Jones, ) 4:01-cv-00592-TMB  
4 )  
5 Petitioner, )  
6 )  
7 vs. )  
8 ) Tucson, Arizona  
9 Charles L. Ryan, et al., ) October 30, 2017  
10 )  
11 Respondents. )  
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BEFORE THE HONORABLE TIMOTHY M. BURGESS, DISTRICT JUDGE

Transcript of Proceedings  
Evidentiary Hearing - Day 1

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UNITED STATES DISTRICT COURT

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**LESLIE BOWMAN**

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1 (On the record at 9:19 a.m.)

2 THE COURT: All right. Good morning. We are on  
3 record in Jones vs. Ryan, CV-01-592. This is the time set for  
4 an evidentiary hearing.

5 Before we get to the opening statements of counsel, I did  
6 make a determination, in light of the *Sanchez-Gomez* case, on a  
7 level of restraint, and, after consultation with the marshals,  
8 I have decided to allow his writing hand to be free for  
9 purposes of the evidentiary hearing.

10 Let me ask, Mr. Sandman, any objection you want to make?

11 MR. SANDMAN: No, Your Honor.

12 THE COURT: Okay. Thank you, very much.

13 In that case then, I thought the parties may have had  
14 one or two things they wanted to raise before we got to --  
15 before we got to the opening statements.

16 MS. SMITH: Sure, Your Honor. The parties have come  
17 to agreement about several exhibits to be admitted without  
18 objection, so we would just go ahead and move those into  
19 admission on the record.

20 So that would be Petitioner's Exhibits 1, 2, 3, 5, 6,  
21 9 through 12; 16 through 33; 35 through 43; 45 through 55; 58;  
22 59; 59A; 61 through 67; 69 through 82; 86 through 94; 97; 103  
23 through 111; 113 through 122; 124 through 138. And then I  
24 believe 139, the objection was overruled in your ruling this  
25 morning.

1 With respect to respondent's exhibits, we agree to  
2 admit 180 through 202, and 211. Thank you.

3 THE COURT: Great. So you all saw the order in regard  
4 to the three outstanding motions in limine, which is what you  
5 were referring to.

6 MS. SMITH: Yes, Your Honor.

7 THE COURT: The only other thing I would mention, as  
8 we go through the hearing, I'll ask counsel to make sure to  
9 periodically check with Madam Clerk to make sure that the  
10 exhibits you think are in are actually in. All right?

11 So, with that, unless there is anything else before we  
12 get to opening statements.... Anything from respondent's?

13 MR. BRACCIO: Not from respondent's.

14 THE COURT: Anything from petitioner before we get to  
15 opening statements?

16 MR. SANDMAN: I don't have anything to turn the volume  
17 up either.

18 THE COURT: No, that's not a problem.

19 MR. SANDMAN: I think Ms. Smith forgot to mention  
20 Exhibit 12 as one that's going to be offered. That was the one  
21 we discussed with you earlier this morning.

22 THE COURT: Okay.

23 MR. SANDMAN: That would be it for us.

24 THE COURT: Great. All right.

25 MR. SANDMAN: Your Honor, Cary Sandman here on behalf

1 of Mr. Jones; Karen Smith, of course, my co-counsel; and a  
2 number of staff here, and some folks in the courtroom over here  
3 on the left that actually are friends of Mr. Jones.

4 I thought what I would do to start is if we could put  
5 up the slides of -- the aerial slides, please.

6 As soon as we can pull those up, Judge, I was going to go  
7 through some aerials and some photographs of the park where  
8 Mr. Jones lived, and so on, just to give you some familiarity  
9 with some of the places we are going to be talking about.

10 This is the trailer park where Mr. Jones lived, which is on  
11 the screen now. Mr. Jones' trailer is Number 23. There's an  
12 arrow pointing to it up in the northeast corner there. The  
13 property consists there of a number of trailers and some  
14 apartments down on the right side of the photo you can see  
15 there.

16 Down at sort of the south end there's a little pad with an  
17 F next to it. That was where the Fleming family had sort of, I  
18 guess you'd call it, a little trailer set up there. It was at  
19 that location at around 5:15, 5:30 on Sunday, May 1st where  
20 Rachel was first discovered sick, at least where she was  
21 visibly seen trying to vomit and so on.

22 The next slide. You can see -- let me get it up. You can  
23 still see the trailer park there down on the lower right-hand  
24 corner. And then as you go north, you can see there's -- the  
25 Rural/Metro station is the next little flag there. And as you

1 go further up on the left, there's the Quik Mart that you read  
2 about in some of the papers.

3 Can we see the next slide? A little further north from the  
4 other slide is where the Quik Mart -- the Choice Market is,  
5 that was a little further north. There's a little red circle  
6 on the left-hand side where the Lopez family lived. It's along  
7 the north side of that Choice Market where the children said  
8 they saw the van.

9 Next slide.

10 Is the slide show not working? Apparently it is not  
11 working.

12 Excuse me, Judge. I'm sorry.

13 THE COURT: We'll take a pause for a moment here.

14 MR. SANDMAN: Your Honor, the next slide here is a  
15 photo of, actually, Mr. Jones' trailer.

16 THE COURT: A quick question. Was that the middle of  
17 those three trailers on slide one?

18 MR. SANDMAN: Yes.

19 THE COURT: Thank you. Go ahead.

20 MR. SANDMAN: Mr. Jones was living there at the time  
21 with his daughter, Brandie, age 11, Angela Gray and her three  
22 children: Becky, age 10; Rachel, age 4; and John, 14.

23 Go to the next slide please.

24 This is the outside of Mr. Jones' trailer, Judge. You'll  
25 see a clothesline there. According to Ms. Gray, there's a

1 statement that she gave -- that's cited down at the bottom of  
2 the page in Bates Number 536 -- Becky had strung Rachel up on  
3 that clothesline at least one time that the mother knew about.  
4 And whether there were other times, of course, we don't know.  
5 She was reported to have fallen off that clothesline.

6 I mention that not to suggest that -- well, just to suggest  
7 that, as you'll see as we go through these slides, there are a  
8 number of dangers surrounding this child in that trailer park.

9 The next slide. Why don't we skip ahead a couple sides, if  
10 we can.

11 That's the front entry.

12 We'll just go through them quickly, if we can.

13 Just the living room.

14 Just scroll through them.

15 This is Mr. Jones' bedroom. If you look at the upper --  
16 there's a blue garment. There appears to be a blue garment on  
17 the floor next to the bed. Eight-year-old Ray Lopez said that  
18 the man driving the van that he saw was wearing a blue shirt on  
19 that Sunday afternoon. Apparently that shirt -- as you'll hear  
20 in testimony from Ms. Pesquiera eventually -- that shirt was  
21 never recovered for testing for forensic evidence. The lack of  
22 any valuable forensic evidence on the shirt would have been  
23 helpful.

24 The next slide is the children's bedroom.

25 On the bed on the left was where Rachel slept. The bunk



1 beds were for Becky and Barry Jones's daughter, Brandie, at  
2 least for a period of time.

3 And I should say, Judge, this family all -- these families  
4 lived together for about three or four weeks total. Initially,  
5 14-year-old Johnny actually slept on the floor of that room,  
6 and there were concerns about improper touching of Rachel I'll  
7 talk about a little later this morning. He was eventually  
8 moved out of that room and a separate little alcove was made  
9 for him.

10 The next slide.

11 This is the entry to the bedroom. And on Monday morning,  
12 in the wee hours of Monday morning, Rachel's sister, Becky,  
13 found Rachel lying on the floor there next to that table and  
14 put her back in bed.

15 Next slide, please. Next slide.

16 That's Rachel on the left side of the screen, Your Honor.  
17 She has a bruise on her eye and on her forehead. And we were  
18 interested in the fact that several adults who had visited the  
19 trailer on Sunday night, when Rachel was sick, reported not  
20 seeing that bruise. And so we posed the question to Dr. Howard  
21 and Dr. Ophoven, some of the doctors who will testify later  
22 this week, and into next week, if Rachel had fallen into that  
23 little table that you see in the photograph, where she was  
24 found sort of laying in the doorway there, could that have  
25 caused the injury that you're looking at in the photograph?

1 And the answer was yes, that it could.

2 The next photograph in the series is obviously not from the  
3 trailer, but this was an autopsy photo. What I wanted to show  
4 you was there's blood on the sheet emanating from the scalp  
5 wound that Rachel had.

6 One of the things that happened at the trial in this case  
7 was that, as you'll know, there was some blood found in the  
8 van, and the prosecutor argued that that could not have come  
9 from Rachel being in the van Monday morning -- she was rushed  
10 to the hospital -- because you don't bleed after you die. And  
11 this photo, which obviously trial counsel had, indicates that a  
12 couple of days after her death that wound was still seeping  
13 blood. And the doctors will testify that, of course, the idea  
14 the prosecutor suggested at the trial, that you don't continue  
15 to see blood after you die, was incorrect.

16 THE COURT: I want to make sure we're not going to  
17 have any of the sealed photos or unredacted photos shown in --  
18 to the gallery here today.

19 MR. SANDMAN: There won't be any.

20 THE COURT: Thank you.

21 MR. SANDMAN: Can we go to the PowerPoint now.

22 Judge, what I wanted to do next is take a little bit of  
23 time to go through some of the state's proposed findings of  
24 fact. You have those. You've probably looked at them. They  
25 contain those citations to the record, and so I want to focus,

1 maybe take some time to go through some of them with you.

2 If we could pull up --

3 THE COURT: You're referring to Docket 242?

4 MR. SANDMAN: I believe that was the respondent's  
5 proposed findings.

6 THE COURT: Yes.

7 MR. SANDMAN: On the screen we have the proposed  
8 finding number one. It makes a reference to Carol Jones, who  
9 is Mr. Jones' former spouse. You can see in the bold print  
10 there she alleged that she left him due to domestic abuse  
11 against her and her children. Carol Jones also had obtained an  
12 order of protection against the petitioner after he repeatedly  
13 struck her children.

14 So here's the story with respect to this evidence, or  
15 the allegations. It was excluded by the trial court from the  
16 trial. We have a citation to the transcript of April 4, 1995.  
17 There was an effort to introduce some of this evidence at the  
18 trial, the trial court said no, and so it doesn't really have  
19 any relevance, certainly to the *Strickland* weighing analysis,  
20 and when you weigh what the jury knew versus what -- against  
21 the new evidence. This evidence was excluded.

22 In the next slide -- and maybe part of the reason it  
23 was excluded -- I don't know whether there was a reason or  
24 not -- the ex-wife made a lot of different kinds of statements  
25 about her relationship with Mr. Jones. One of the things she

1 said here on this next slide in an interview was that after she  
2 obtained that order of protection several years before any of  
3 these events, they got along just fine.

4 That's actually the slide after. Excuse me.

5 Then she also said -- the next slide, this was an  
6 interview I believe with defense counsel -- that when she was  
7 initially interviewed on May 3rd, 1994, the sheriff's  
8 detectives wanted her to say that Barry was real abusive when  
9 they initially interviewed her, but he was not.

10 The next slide.

11 There was a single CPS investigation that found no evidence  
12 of abuse.

13 So what I would say about all this evidence, it never went  
14 in at the trial.

15 There is some evidence, of course, the trial counsel had  
16 this information. There was information that trial counsel had  
17 that Mr. Jones was emotionally fragile at the time of his  
18 separation from Carol Jones, he sought mental health treatment  
19 at Kino Hospital, but none of that has anything to do with  
20 evidence that the jury heard, and there is no witness who will  
21 testify in these proceedings as to any of those facts.

22 Next slide, please.

23 This is proposed finding number two.

24 I want to concentrate on the bold print there: Before  
25 Angela moved into petitioner's trailer, none of her children

1 were abused or exhibited bruising.

2 Next slide, please.

3 The record doesn't substantiate that, Your Honor. We're  
4 looking at a letter written by Ms. Gray's 14-year-old son to  
5 the Court before her sentencing, referencing the fact that he  
6 wanted his mother to stay in jail because of "hitting me" and  
7 "beating me." Down at the bottom, a reference to "beating  
8 people."

9 The next page, please.

10 The proposed finding asks you to find there was no bruising  
11 on any of Angela's children. And here is a statement made by  
12 Angela's daughter, Rebecca, on May 9, 1994, this is right after  
13 Rachel died, where she stated there had been bruises. She had  
14 been hit in the stomach, arm and face.

15 Of course, being struck in the stomach has resonance in  
16 this case because that's exactly where Rachel was struck by  
17 somebody.

18 Next slide, please.

19 Then, of course, we get into the question, well, who was  
20 abusing these children while they were all living together.  
21 There were a number of questions asked of these kids: Did  
22 Barry ever discipline you with a spanking? And Rebecca said  
23 no. As this slide indicates. What did he do if he lost his  
24 temper? He would tell us to go to our room.

25 Next slide, please.

1 More questions about Angela kicking and hitting her  
2 children.

3 So the suggestion that Angela had not been abusive before  
4 she lived with Mr. Jones just obviously appears to be  
5 inaccurate.

6 Next slide.

7 This was an October 31, 1995 interview and excerpt from an  
8 interview of the aunt who took custody of Becky and Johnny  
9 after Rachel died, and she was asked some questions about  
10 whether she felt those children had been sexually abused. She  
11 said not by Barry. And asked why, at the bottom she references  
12 family had been over to the house, walking in and "seen Becky  
13 sleeping with a bunch of drunk men."

14 Again, I mention some of these things like the clothesline  
15 and some of this other evidence because this was a very  
16 dangerous environment for these children that had nothing to do  
17 with Mr. Jones.

18 Next slide, please.

19 Again, going to the evidence of the mother's abusive  
20 behavior, this is a continuation of an excerpt from Donna  
21 Marini's interview where she's asked about whether the children  
22 were abused, and she relates some of the information coming out  
23 in counseling sessions, including Angela slamming the children  
24 up against walls and throwing them down stairs. She's asked if  
25 those things were done recently, and she says they were done

1 all the time on and off.

2 Then the final question in this excerpt: From what the  
3 children have told you, was he abusive to them, Barry? No.

4 Next slide, please.

5 This is an interview of Becky Lux, on October 30, '95. An  
6 excerpt regarding questions whether there were any -- she  
7 noticed any unusual bruises on her sister, Rachel. She  
8 describes a handprint. She says: I guess my mom spanked her.  
9 She did something bad and it bruised.

10 Again, this idea in the post finding that Angela never  
11 abused her children. Here, we have a bruise on Rachel. This  
12 was in April, according to this excerpt, which is right before  
13 these events that, of course, we are here about today.

14 Next slide.

15 There were some questions about did Barry ever spank  
16 Rachel. She said a little whack on the behind, you know, a  
17 little light whack.

18 Next slide, please.

19 More evidence of abuse witnessed committed by Angela Gray  
20 on her children. This has resonance. This comes from the  
21 trial April 11, Terry Richmond. He was asked if he had seen  
22 Angela Gray strike Rachel on the side of the head. Yes, ma'am.  
23 Now, that has resonance because we know -- you'll hear one of  
24 the autopsy findings was she had some blood in the ears.

25 So next slide, please.

1        This is proposed finding number three, and it goes to  
2        the -- it proposes that there wasn't any events that Rachel  
3        played in petitioner's -- any of the children had played in  
4        petitioner's van.

5        Next slide.

6        Part of the problem really knowing whether that happened is  
7        that there are tons of kids out there in that trailer park, and  
8        they just ran free, including four-year-old Rachel, as you'll  
9        hear in a couple -- a few slides later.

10       Next slide, please.

11       This slide comes from an interview that investigator George  
12       Barnett did around May 9th, a few days after the homicide. He  
13       interviewed Shirley DeVous, who lived on one side of Mr. Jones  
14       in that trailer park. I forget which side. But she said that  
15       on Sunday, May 1st, which is, of course, an important day, she  
16       observed kids playing around the front of Barry's trailer, and  
17       this was not unusual.

18       Next slide.

19       And Michael Fleming reported kids, including his son,  
20       playing down there on that Sunday with other kids.

21       Next slide.

22       This is an excerpt from the interview of March 24, '95, of  
23       Stephanie Fleming. She saw these kids running around on May  
24       1st, a whole bunch of kids playing right around her trailer.  
25       Rachel was there. And she goes on to conclude, you know, at



1 times they were playing unsupervised under a trailer.

2 Ms. Fleming had sort of an interesting story, because when  
3 Mr. Barnett, the investigator, went out and interviewed people  
4 in the trailer park, he was informed by the park manager that  
5 Ms. Fleming moved the day Rachel died, concerned that either  
6 she or one of her children would be accused of harming Rachel.

7 Next slide.

8 This is proposed finding five, Your Honor. It alleges that  
9 during a trip, alone with petitioner, Rachel suffered an injury  
10 to her face resulting in two black eyes. This doesn't have  
11 anything to do with what happened on May 1st. They're claiming  
12 this happened sometime in the weeks prior, and that Rachel  
13 expressed her fear of petitioner and that she confessed to  
14 sister Rebecca.

15 Let's go to the next slide.

16 So let's see about this confession to sister Rebecca.

17 About four lines down: Do you know at what point in time  
18 it was that Rachel got these black eyes? And she says the  
19 second week of April. And a few lines down she goes: I  
20 remember it was right after her birthday. And she's asked:  
21 How do you know -- do you know how she got the black eyes? She  
22 never says Mr. Jones did it, as her proposed finding of fact  
23 tells you. She says: Rachel said that a girl had swung right  
24 here with a broom and fractured it. That's what Rachel said?  
25 Yes.

1        So the proposed finding asks you to find that Rachel  
2        confessed to Becky Mr. Jones had caused black eyes. And here,  
3        in this interview, October 1, '95 -- it should be '94. I think  
4        there was a mistake in the date. But, in any event, long after  
5        these events passed, she said Rachel gave some other story.

6        As far as Rachel being afraid of Barry, this next line,  
7        which was gotten from the interview of the mother, Angela Gray,  
8        says it was Becky who threatened Rachel and told her if she  
9        didn't do what she wanted or tattled on her, that Barry would  
10       get her. If you want to know the root cause of Rachel being  
11       afraid of Barry for a few days, that's what that resulted in.

12       Next slide.

13       This is proposed finding number six. Angela discovered a  
14       handprint on Rachel's buttocks, but Rachel would not reveal who  
15       inflicted the abuse on her. Well, we sort of touched on this.  
16       And also this proposed finding says Jonathan Lux observed  
17       petitioner hit Rachel.

18       So, as far as the handprint goes, Brandie, in an interview  
19       of her, reported that she saw Angela smack Rachel, the next  
20       morning she saw the handprint, and Angela said that she had  
21       caused that bruising, which had to be a very substantial whack  
22       to leave a handprint the next day.

23       Then the next slide.

24       Again, Becky Lux confirms that it's Angela who caused the  
25       handprint, nothing to do with Mr. Jones.

1           Then the proposed finding that Jonathan Lux was witness to  
2     some type of abuse by Mr. Jones on Rachel, he was asked about  
3     that. On May 2nd, 1994, the day Rachel died, he was asked:  
4     Has Barry ever spanked the kids? No. He says: If Rachel has  
5     bad behavior, he tells her to go to her room. That's all he  
6     does.

7           Next slide.

8           This proposed finding number seven indicates three days  
9     before her death, no one observed any significant injuries to  
10    Rachel. Amanda, Angela's sister, stopped by and only observed  
11    Rachel's black eyes.

12          Next slide.

13          Oh. You're there. I'm sorry.

14          I think you skipped a slide.

15                 THE COURT: Yeah.

16                 MR. SANDMAN: Can you go back one?

17                 So part of that proposed finding is accurate, that  
18     Aunt Amanda saw dark circles under her eyes. She also  
19     exhibited the same dark circles under her eyes Sunday  
20     afternoon, when she was a number of hours away from going into  
21     shock and dying. So to say that dark circles on the afternoon,  
22     Friday afternoon, are unrelated to the injury that ultimately  
23     killed her, I think is a stretch.

24                 Next slide, please.

25                 In addition, the suggestion that Rachel wasn't sick before

1 late Sunday afternoon, there is an interview that was done on  
2 May 19, 1994, of one of the neighbors, Isobel Tafe. She saw  
3 Rachel on Saturday, April 30th. Now, significantly, she sees  
4 Rachel wandering around that trailer park without any adult  
5 supervision. She describes in the interview Rachel looking  
6 scared. She says Rachel's color wasn't natural; it was just  
7 gray, pale grayish color. Same way she was described late  
8 Sunday afternoon by people who saw her then.

9 There's plenty of evidence here that, well, clearly  
10 describes the fact that this child was showing signs of illness  
11 way before Sunday.

12 The most clear example of that -- I don't have a slide of  
13 this, but Dr. Howard gave a declaration to us. He was the  
14 original pathologist who did the autopsy. In his declaration,  
15 he says that there was evidence of bruising, you can't exactly  
16 date bruises. He said there was evidence of bruising dating  
17 back six days on her abdomen. So to suggest that -- and maybe  
18 no one else saw it, but he saw it when he did the autopsy, and  
19 it wasn't something that came from Sunday, May 1st.

20 Then the next slide.

21 Again, this is Mrs. Fleming reporting on Sunday, May 1.  
22 She's describing the same discoloration under the eyes of  
23 Rachel that was seen the day before by Ms. Tafe.

24 Next slide.

25 Now, finding number ten, which is proposed finding number

1     ten, I want to talk about for a minute.

2             Brandie Jones sort of became the focal point of a story  
3     that she had seen a little boy in the trailer park strike  
4     Rachel in the stomach with a metal bar. And I should say, you  
5     know, we're not claiming that she was killed by another child.  
6     What we're talking about, again, is that this is a dangerous  
7     area, we see this child after she dies with a number of marks  
8     on her. Did they come from falling off a clothesline? did they  
9     come from the mother smacking her? did they come from another  
10    child inflicting some harm to her? I think it would have been  
11    all of those things.

12            I don't want you to -- I am not suggesting that a child  
13    killed her. I am trying to make the point that this was an  
14    unsafe environment, especially for a four-year-old  
15    unsupervised.

16            THE COURT: The child that supposedly struck her, I am  
17    sorry to ask this question, but was it a two-year-old child?

18            MR. SANDMAN: It was alleged to be a large  
19    two-year-old child that had a metal bar.

20            THE COURT: I just wanted to make sure I understood.

21            MR. SANDMAN: But the problem we have now -- let's go  
22    to the next slide -- why it became sort of Brandie's word  
23    against the world, the reason that it turned out that way is  
24    because leads that other people had seen this event were never  
25    interviewed or contacted.

1           And this next slide I am showing you from March 21, 1995,  
2   an interview of Michael Fleming, he says one of the kids who  
3   saw the little boy hit Rachel with a stick or crowbar was the  
4   10-year-old son of another neighbor, Pauline. Don't know who  
5   that is. That person was never interviewed, it was a lead not  
6   followed.

7           Next slide.

8           This is a slide from Brandie's interview where she  
9   describes what she saw.

10          And the next slide.

11          She sort of described the shape of it, "a metal bar that  
12   went like this and curved like that." I'm not sure what that  
13   means, but she said it "had a little curly thing right there at  
14   the bottom."

15          The next slide.

16          The instrument she described fits sort of a pattern injury  
17   that was seen on Rachel.

18          Next slide.

19          I think we may have made a reference to this, Isobel Tafe  
20   making a reference to seeing her on the 30th looking scared.

21          Next slide.

22          Then Rachel had -- I know this became Brandie's sort of  
23   cross to bear, if you will, but a number of people heard Rachel  
24   say that she had been hit by a little boy with a metal bar,  
25   including her sister Rebecca, who gave the statement on the day

1 Rachel died, May 2nd: "She kept saying a boy pushed me out of  
2 the van and hit me with a metal bar."

3 Next slide.

4 That story, Rachel told that to her mother.

5 Next slide.

6 In an interview with Stephanie Fleming about all this, she  
7 told police that Don and Pete had heard that one of her sons  
8 had hit Rachel with a stick. Well, who are Don and Pete? No  
9 one ever follows up to see what those people knew about it.

10 Next slide.

11 Proposed finding number sixteen, that Mr. Jones made up a  
12 false story that he saw Rachel fall out of his van sometime in  
13 the afternoon.

14 Next slide.

15 Again, this is an interview of Rebecca, on May 2nd, the day  
16 Rachel died, saying: Rachel kept saying a boy pushed her out  
17 of the van and "hit me with a metal bar in the stomach." It's  
18 not all coming from petitioner.

19 Next slide.

20 She told her mother the same thing. She told Brandie the  
21 same thing.

22 Next slide, please.

23 In this proposed finding they're asking you to find that  
24 Rachel told Angela in the presence of her sister Rebecca and  
25 daughter Brandie that petitioner hit her with a metal shoe bar

1 in the head and the stomach.

2 Now, supposedly -- I should step back a minute and say that  
3 on Sunday evening, when Rachel was just a few hours from going  
4 into shock and dying, she was making these statements. She  
5 must have been extremely ill. I don't know how that would  
6 affect the mental capacity of a four-year-old. But at some  
7 point in the midst of saying that these boys -- the boy had hit  
8 her and pushed her, she said that Barry had hit her with the  
9 metal bar in the head and the stomach.

10 And there was litigation in the trial court about whether  
11 that should be admitted. That's the next slide. Whether that  
12 was hearsay, whether it was some exception to the hearsay rule.  
13 And in the midst of the pretrial argument, the day before the  
14 trial started, on April 4th, 1995, the prosecutor said she was  
15 withdrawing any effort to proffer that evidence.

16 So there was no evidence given to Mr. Jones' jury that he  
17 had ever struck Rachel with a metal bar. There will be no  
18 witness in these proceedings who will testify that that ever  
19 happened, and it's another example of something that really is  
20 historical. It has no relevance to the weighing process in  
21 assessing what did Mr. Jones' jury hear versus, you know, what  
22 should they have heard.

23 Next slide, please.

24 Again, it's just Angela's -- we've already gone over some  
25 of this. You can go ahead and go through the next couple of



1 slides. I think we're about done with that.

2 So I think that one of the challenges in this  
3 extraordinarily, oftentimes seemingly complex case, is I think  
4 we need to strive to be careful about -- in grafting a lot of  
5 statements in the records without thinking about whether a jury  
6 ever really heard that evidence. And I've touched on some of  
7 that, but I think I have also hopefully been able to show you  
8 that some of the things that I want you to find are really  
9 contradicted by the record, particularly to suggest to you that  
10 there was never any evidence that the mother abused her  
11 children. I think it is clearly refuted now.

12 I should say the jury didn't hear about any of that either.  
13 So, you know, the question is though, you know, should defense  
14 counsel have investigated that and pursued that. In light of  
15 all the evidence I have just discussed with you about the  
16 mother's abusive behavior and hitting on the side of the head  
17 and all these other things that she was doing, you know, should  
18 that have been a focal point of their investigation? And I  
19 think you'll find that it wasn't. And, certainly, if anything,  
20 when they had all that evidence that the mother was abusive,  
21 and they have their client saying that he's innocent, that  
22 should have had some resonance, and maybe they should have paid  
23 a little more attention to their client's innocence claim.

24 I want to shift from talking about what the case is really  
25 not about to evidence that actually led to Mr. Jones'

1 conviction. That's what we're here to talk about. The  
2 principal evidence that led to Mr. Jones' conviction was that  
3 Rachel Gray suffered all of her injuries on Sunday afternoon,  
4 May 1st, on a third trip she took with Mr. Jones in his van.  
5 That's the focal point. That's what he was arrested for even  
6 before the autopsy was done.

7 That element of proof depended on medical evidence. They  
8 couldn't prove that he had done -- Mr. Jones had done anything  
9 to Rachel without medical evidence, and they ultimately  
10 presented medical evidence that was uncontested, tying all of  
11 Rachel's injuries to the late afternoon of Sunday May 1,  
12 including a fatal tear to her small bowel. She had a vaginal  
13 injury they dated to that time. She had a scalp injury they  
14 dated to that time. We presented evidence that demonstrates  
15 the state's medical evidence was incomplete, incorrect, and  
16 unreliable, and that's the main focus of why we are here.

17 The state also presented blood evidence found on Mr. Jones'  
18 clothing that they argued supported the conclusion. I'd like  
19 to see those blood slides. They used this blood evidence to  
20 argue that that proved that Rachel had been physically and  
21 sexually assaulted in the van.

22 I just have a few slides I want to move on to with respect  
23 to that.

24 So this first slide, Your Honor, is a red shirt, that's  
25 Mr. Jones', on May 2nd. The analyst found a trace of human

1 blood too small to characterize on the shirt. So this was not  
2 a bloody gory scene on the shirt.

3 At trial, the prosecutor argued it was too small because  
4 there were spatter pattern as a result of a beating, and that  
5 was on the sleeve. They never mentioned -- the prosecutor  
6 never mentioned a transfer stain on the left sleeve or the rear  
7 of the shirt.

8 You'll hear evidence from our blood interpretation expert,  
9 Stuart James, that a transfer stain happens when you come into  
10 touch with something. Mr. James looked at the same evidence  
11 and said the key point is, I think, what he says at the bottom  
12 of the page: These stains could have occurred as a result of  
13 lifting or otherwise attending to an injured person. Mr. Jones  
14 had contact with Rachel on Sunday afternoon, when her scalp  
15 wound started to bleed.

16 Now, let me just say about the scalp wound, the tissue  
17 slides show that that wound was at least two days -- let me be  
18 precise -- more likely than not, two days old. The scalp  
19 wound, to Rachel. Way before May 1st.

20 And everybody around that child all day on May 1st, no one  
21 sees her head bleeding. When she starts to try to vomit at  
22 5:15, at the Fleming trailer there, late Sunday, there is no  
23 blood noticed there. She's already sick, obviously, from  
24 peritonitis that she's had stewing for a couple days. She goes  
25 home, Mr. Jones takes her home and lays her down and notices

1 blood on a pillow from where she had a barrette in her hair,  
2 that's the first time anyone sees any blood. And obviously we  
3 will present evidence to show that it wasn't anything that  
4 actually happened on May 1. Quite frankly, it makes this whole  
5 issue about falling out of the van almost irrelevant, because  
6 the injury didn't even happen that day.

7 Next slide.

8 Again, you know, small amount of blood on the pants. You  
9 can't see it, but it's there, a little bit of Rachel's blood.  
10 At trial, this was, again, presented as additional evidence of  
11 an assault in the van. And, again, Mr. James concluded the  
12 small amount of blood on this clothing was only a small  
13 transfer of blood on his jeans consistent with the victim. So  
14 that's the transfer of someone pushing something, it's not  
15 beating someone and having spatter.

16 Next page.

17 There was a little bit of blood found on the carpet, and  
18 the prosecutor argued that that stain is called V6, which was  
19 evidence of the sexual assault occurred in the back of the van.  
20 They presented evidence at trial that it was an impression  
21 stain from her head, you know, laying against the carpet and  
22 being assaulted. Mr. James said it's not, it's a passive drop  
23 of blood, and it wasn't in the back of the van.

24 Next line.

25 The stain was not in the back of the van, Your Honor.

1 There's the cut-out for V6. It's right next to the chair.  
2 Obviously, it dripped off Rachel's head at some point, perhaps  
3 when she was being carried in the chair to the hospital on  
4 Monday morning. So it wasn't a transfer stain. It wasn't even  
5 in the back of the van.

6 Next slide.

7 There were some very small, again, stains on the seats  
8 where you almost can't see. And obviously Rachel was in those  
9 seats. Obviously she was bleeding. The prosecutor, I think,  
10 as I mentioned earlier, said it couldn't have been from Monday  
11 morning when she was being transported to the hospital because  
12 you don't bleed after you die, but we saw the pictures from the  
13 autopsy. You can't draw any conclusions of guilt from that.

14 Go on. Next slide.

15 Let me just wrap up.

16 Of course, you're going to have evidence from three  
17 different experts that the children, who claimed to have seen  
18 an assault on Sunday while Mr. Jones was driving to the Choice  
19 Market, couldn't have happened. Their statements were tainted,  
20 as you'll hear from Dr. Esplin. At their height of around a  
21 little over four feet tall, four feet one inch, it would have  
22 been physically impossible for them to see Rachel in the van at  
23 all, except for maybe the top of her head.

24 So the case just doesn't add up to prove Mr. Jones did  
25 anything to Rachel on Sunday, May 1. Nothing.

1 And could a jury have heard all this and convicted him? I  
2 don't think so. But even if they could, that's not the test.  
3 The test is whether there is a reasonable probability that the  
4 outcome would have been different, one juror hearing all this  
5 and saying this couldn't have happened Sunday.

6 You know, Mr. Jones was upset on the morning Rachel died  
7 and didn't go to the hospital. But nothing happened on Sunday,  
8 he was just upset. So all the inferences changed with this new  
9 evidence.

10 You have our proposed findings and why we thought this  
11 outcome related to the ineffective assistance of both trial and  
12 PCR counsel. I don't really have anything else to say other  
13 than what we've already given in writing on that point.

14 THE COURT: Okay. Thank you very much.

15 MS. GARD: May it please the Court, my name is Lacey  
16 Gard. I am here for respondents. So the record is clear, at  
17 counsel's table with us, in addition to me and Mr. Braccio is  
18 Sergeant Pesquiera, the case agent; J. D. Nielsen, who is  
19 co-counsel; and Daniel Vidal, who is our paralegal.

20 I thought it was interesting, with Mr. Sandman's  
21 argument, we didn't really hear the *Strickland* standards  
22 mentioned until the very end. So I wanted to take a moment to  
23 refocus on what we're here to talk about. Because we're not  
24 here to talk about whether Mr. Jones is guilty or innocent. We  
25 are here to talk about whether his attorneys performed

1 adequately in representing him, and, whether they did not,  
2 there's a reasonable probability he would have been found not  
3 guilty.

4 I would remind the Court that Mr. Jones raised and  
5 litigated an actual innocence claim based on this same  
6 evidence, and that was rejected, I believe. I believe that was  
7 Judge Zapata that rejected that. But that's been litigated.

8 So here we are asking whether his attorneys effectively  
9 represented him, which is a very deferential inquiry even on a  
10 de novo review, and of course we're here on a de novo review  
11 because this is arising in the context of *Martinez* and is not  
12 governed by AEDPA.

13 I guess I'll just jump into the deficient performance  
14 prong.

15 I didn't hear Mr. Sandman talk about that to -- in too much  
16 detail this morning, but I'd like to just remind the Court that  
17 when we look at what counsel did in the next few days, that we  
18 need to assess their performance from their perspective at the  
19 time and in light of the circumstances they faced at the time.

20 So what you'll see, I think, in the coming days is a  
21 presentation that's been developed by the Federal Public  
22 Defender, who has significantly more resources and more  
23 manpower than trial counsel did. Notwithstanding that, the  
24 attorneys, you'll see in the coming days that Leslie Bowman and  
25 Sean Bruner identified and investigated the very lines of

1 defense that Mr. Sandman identifies here today.

2 We expect that the attorneys, when they testify, won't  
3 remember all that much about this case, which is to be expected  
4 because it's 23 years after the fact. But that doesn't defeat  
5 or doesn't make their claim for a couple of reasons. The first  
6 being that a lapse in memory does not rebut *Strickland's*  
7 presumptions. The second being that, again, this is an  
8 objective standard, where we need to see whether what they did  
9 at the time was reasonable given the circumstances that they  
10 faced.

11 And I am not certain whether any attorney will claim that  
12 they were ineffective. There is some suggestion that one  
13 might. To the extent that happens, again, that's not  
14 dispositive because it's an objective standard, and we want to  
15 look back at what they were faced with and whether a reasonable  
16 attorney could have made the decisions that they made.

17 Mr. Sandman talked a good bit about the facts of the case,  
18 and some of what he mentioned was not admitted at trial. For  
19 example, the statements by Rachel about the shoe bar. Just for  
20 the record, those are contained in Angela's Gray statement to  
21 the police, the statements that Rachel made that the defendant  
22 hit her.

23 But what -- the facts of the case are relevant for two  
24 reasons. Not just for *Strickland* prejudice, the prejudice  
25 analysis, but also for counsel's decision making. Because



1 counsel had before them the entire police investigation, which  
2 did disclose and did contain information about Jones' prior  
3 abuse.

4 Now, we can argue -- and perhaps it would be appropriate in  
5 the coming days -- to argue about how extensive that was or,  
6 you know, what the circumstances of that were, but that was  
7 something that was known to counsel and was -- would have  
8 focused into a reasonable attorney's decision making.

9 The facts of this case really -- and I am not certain at  
10 this point exactly what Mr. Sandman's theory is of how Rachel  
11 came to be injured, because I certainly saw suggestions  
12 throughout the briefing and in the records that a child had  
13 injured her. It seems like that's not their theory any longer,  
14 but the evidence as a whole points really only to Mr. Jones as  
15 the perpetrator here. Setting aside the medical evidence,  
16 which we'll talk about in a second.

17 But Rachel was in Mr. Jones' care the entire day before she  
18 died, Sunday, May 1st, was in Mr. Jones' care, beginning from  
19 the time he woke up in the mid-afternoon through the rest of  
20 the day while the mother was sleeping.

21 Despite what Mr. Sandman said about -- I think it was  
22 Amanda Gray and Isobel Tafe -- I think the evidence will show  
23 that Rachel was not ill. There was no evidence of vomiting or  
24 of pain or anything like that prior to Sunday. The fact that  
25 two children had seen Mr. Jones striking Rachel in the parking

1 lot was certainly something that was very difficult for counsel  
2 to overcome, and that certainly went into their decision making  
3 as well, as well as the blood being in Mr. Jones' car. And  
4 also we talked a minute ago about the statement that Rachel  
5 made regarding the shoe bar, being struck by the shoe bar.

6 And I would note that, as Mr. Sandman had observed in his  
7 PowerPoint, there was some litigation about that, and  
8 ultimately the prosecutor withdrew her attempt to introduce  
9 that statement, but that was opposed by counsel, right? So  
10 counsel at least expended effort trying to keep that statement  
11 out and was ultimately successful.

12 A critical point as well -- and I didn't hear this  
13 mentioned by Mr. Sandman -- that is reflective of Mr. Jones'  
14 guilt is the fact that he dissuaded the mother, Angela Gray,  
15 from seeking medical treatment by telling her falsely that he  
16 had taken Rachel to see the paramedics. I believe there is no  
17 dispute at this point that it's false -- that was a false  
18 statement, that Mr. Jones took her to a fire station. That  
19 never happened.

20 And the result of that, of course, was to prevent the  
21 mother from getting medical treatment for Rachel. And I think  
22 Dr. Ophoven has acknowledged in one of her reports that  
23 Rachel's death, although resulting from the injury to her  
24 abdomen, resulted also from medical neglect, that she could  
25 have been saved had she been taken to the hospital, and that

1 any caretaker should have recognized that she could have been  
2 saved.

3 And the defendant also -- this was known to counsel, too,  
4 this had to go into counsel's decision making process, the fact  
5 that when Mr. Jones and Angela Gray found Rachel unresponsive,  
6 Mr. Jones dropped Rachel and Angela off at the hospital and  
7 then fled and hid out at a homeless camp, where he told people  
8 he could not go to the hospital because the authorities were  
9 going to be suspecting child abuse, and he was also overheard  
10 muttering apologies to Rachel.

11 But notwithstanding all of that -- so that's a pretty --  
12 that's pretty significant evidence of the defendant's guilt  
13 that counsel had to work with. But notwithstanding that,  
14 counsel did investigate, as I mentioned before, every line of  
15 defense that Mr. Sandman claims they should have. And, again,  
16 they were more limited in their resources than Mr. Sandman was.

17 However, with respect to the medical evidence, we have  
18 admitted now, this morning, Trial Exhibit 1, which is the  
19 totality of counsel's file. So that will tell us what they did  
20 and did not do. But one of the documents in that file that's  
21 going to be very important in this case, and it's separately  
22 marked also as Exhibit 58, is a letter from Judge Bowman to  
23 Dr. Phillip Keen.

24 Dr. Keen will testify here. Dr. Keen is a very well known  
25 and well respected expert in pathology here in the State of

1 Arizona. He is a former medical examiner, chief medical  
2 examiner, from Maricopa County and Yavapai County. Judge  
3 Bowman wrote him a letter and asked him to review the autopsy  
4 report in this case. In that letter, she also offered to make  
5 available additional information he might need, including  
6 tissue slides.

7 I expect you'll hear an allegation from Mr. Sandman that  
8 Dr. Keen's evaluation was insufficient because he didn't have  
9 those tissue slides. I would submit that we don't know for  
10 certain that he didn't have the tissue slides, but we do know  
11 for certain that Leslie Bowman offered to make them available  
12 to him.

13 THE COURT: Can I pause you for a moment because  
14 you're going fast.

15 MS. GARD: I apologize.

16 THE COURT: You said something a few moments ago that  
17 I was waiting for a pause to ask you about. But you were  
18 talking about the extent of the investigation, said they did  
19 what they could -- you essentially were saying -- I want to  
20 make sure I am clear what you're saying. You said they did  
21 what they could based on the limited resources they had for the  
22 investigation?

23 MS. GARD: No, I'm not saying that at all. I  
24 apologize. I didn't mean to say they were --

25 THE COURT: I know you said they had limited

1 resources, but that doesn't drive --

2 MS. GARD: It certainly doesn't.

3 THE COURT: That doesn't drive the degree of  
4 investigation they need to conduct, does it?

5 MS. GARD: No, it absolutely does not. The point I  
6 was trying to get across is that -- is not that they didn't  
7 request resources or get enough resources, but that the Federal  
8 Public Defender has their own budget, and they were able to  
9 secure very expensive experts and numerous experts.

10 Counsel, at trial, had to request funding for whatever  
11 experts that they wanted to retain, and they did obtain funding  
12 for a medical expert and for an investigator.

13 But, yes, that just --

14 THE COURT: From the trial court?

15 MS. GARD: The trial court. I apologize.

16 THE COURT: Not without some back and forth though.

17 MS. GARD: Right.

18 THE COURT: I think the trial court had some concerns  
19 about the budget and how much experts were going to cost and  
20 whether or not the experts were going to come from outside of  
21 the local area, so on, so forth, right?

22 MS. GARD: Correct. But they were at least  
23 recognizing they needed to ask for it. They can't control what  
24 the Court is going to do, and that doesn't make them  
25 ineffective if they don't get the same amount of funding. And

1 that goes to my argument before that -- that this has to be  
2 assessed given the circumstances the Court was facing -- or  
3 that counsel was facing at the time.

4 THE COURT: So now to take you forward to where I  
5 interrupted you. You were talking about providing tissue  
6 samples, and Judge Bowman offered those to -- offered to  
7 provide those to the medical examiner?

8 MS. GARD: Yes, that's correct.

9 THE COURT: I think that's where we left off.

10 MS. GARD: Okay. In her letter, in addition to asking  
11 him to review -- asking Dr. Keen to review the autopsy report,  
12 she gave him specific referral questions, specific questions  
13 that she wanted him to answer for her, including the timing of  
14 Rachel's abdominal and vaginal injuries, and including the  
15 injuries or the symptoms that she would have suffered after she  
16 sustained her abdominal injury. And those are -- as the  
17 Court's aware, those are the exact medical questions that are  
18 being presented now.

19 Also, around the same time they were consulting with  
20 Dr. Keen, counsel had successfully delayed Rachel's burial in  
21 the event that they wanted another autopsy, which they  
22 ultimately did not pursue. And then we'll see documentation  
23 also -- I believe it's in the billing records -- about a  
24 telephone call between counsel and Dr. Keen.

25 Now, this is where the kind of trail goes cold,

1 because no one can remember what was discussed in that  
2 telephone call. Dr. Keen doesn't remember, and the attorneys  
3 don't remember. So we don't know what Dr. Keen may have told  
4 them orally. We don't know what they may have told him about  
5 the case, in terms of what the police investigation had  
6 collected or -- and we don't know if they told Dr. Keen what  
7 strategy they were pursuing. All we know was that there was  
8 this phone call, after which counsel agreed to release Rachel's  
9 body for burial because there wouldn't be another autopsy.

10 Now, Dr. Keen will tell you, when he testifies, what  
11 opinions he holds today, in 2017, based on his current review  
12 of the records. But I would submit that that doesn't prove  
13 what he told counsel twenty-something years ago. We just  
14 simply don't have a record or any kind of memory of that. We  
15 would submit also that the fact that counsel consulted with  
16 Dr. Keen really defeats the *Strickland* claim on this issue.

17 Counsel also -- I'm sorry. Was there a question?

18 THE COURT: No.

19 MS. GARD: Counsel also hired an investigator named  
20 George Barnett. Mr. Barnett is unfortunately deceased, so we  
21 can't bring him in to talk about his investigation, but he did  
22 leave some reports which are also part of counsel's file, and  
23 we'll talk about that as well in the coming days.

24 George Barnett conducted interviews of the residents  
25 of the trailer park where Mr. Jones lived. Subsequently, upon

1 instructions from counsel, he photographed and measured Jones'  
2 yellow van. Now, presumably that had to do with -- or the  
3 purpose of that was to test the veracity of evidence that  
4 Mr. Jones had beaten Rachel in that van, as witnessed by the  
5 Lopez children. Again, memories are faded and Mr. Barnett is  
6 deceased.

7 So, in light of all of that evidence, and in light of  
8 counsel's investigative efforts, we would submit that you don't  
9 even need to get to *Strickland* prejudice, that this can be  
10 resolved based only on deficient performance because there  
11 clearly was no deficiency.

12 But if you disagree, on the prejudice prong, I think  
13 in analyzing this issue, it's important to keep in mind that  
14 there are three predicate felonies for the felony murder in  
15 this case, and to have that verdict set aside, Mr. Sandman is  
16 going to have to show reasonable probability that all those  
17 predicates fail. Of course, one is based on the abdominal  
18 blow, the sexual assault is the second, and then the failure to  
19 render aid. I think the most -- we'll spend the most time  
20 probably on the medical evidence.

21 There were some -- and just to lead into this, there  
22 were some statements made by Mr. Sandman throughout his opening  
23 about Angela Gray having struck the children before, or  
24 Jonathan Lux, who was the brother of Rachel, having engaged  
25 allegedly in improper touching, but I think at the end of the



1 nine days you'll see that there really is no concrete evidence  
2 of anyone else injuring Rachel, inflicting this fatal injury to  
3 Rachel other than Mr. Jones.

4 There has been some suggestion in the pleadings that  
5 Dr. Howard, who conducted the medical -- or the autopsy in this  
6 case and testified at trial, has changed his opinion in some  
7 way. And that's, we will show, not accurate. His opinions are  
8 the same now as they were at trial.

9 THE COURT: You're referring to the timing of the  
10 his -- the assessment of the timing of the injury and that he  
11 said one thing at trial and another thing at a different trial?

12 MS. GARD: Correct. I'd like to just talk about the  
13 trial testimony a little bit, because I think the implication  
14 of Mr. Sandman's argument today in some of the briefs is that  
15 Dr. Howard said it absolutely happened that afternoon, and the  
16 questioning is a little bit more vague and open-ended than  
17 that.

18 Really, this comes down to a single question from Kathy  
19 Mayer saying -- actually two questions, I apologize, from Kathy  
20 Mayer, who was the prosecutor, asking Dr. Howard are these  
21 injuries consistent with being inflicted between 2:00 and 5:30,  
22 the day before Rachel's death -- this is on the April 12th  
23 transcript at Page 117 -- and he said yes. But subsequently in  
24 his testimony he was asked a similar question by Kathy again --  
25 or by Ms. Mayer again, I apologize -- and at that point he said

1 that at any time in the 24 hours prior to that would be  
2 consistent, so that time frame would be possible.

3 In addition, Dr. Seifert, the emergency room doctor who  
4 testified at trial, discussed the peritonitis, which is the  
5 infectious process that ultimately took Rachel's life and  
6 ultimately killed her, stated that process could take from  
7 hours to days.

8 So the timing, while he did -- while Dr. Howard did agree  
9 it was consistent with that short time period, I disagree that  
10 the trial evidence absolutely said it had to be during that  
11 time period.

12 But, regardless, I think that the evidence that we're going  
13 to hear from Dr. Ophoven, who the Court may have encountered,  
14 she's a well known defense expert, Dr. McKay, who is an  
15 emergency room doctor, and Dr. Howard, will establish that  
16 really the timing is variable here, that you can't completely  
17 pinpoint when someone would suffer an injury like that.

18 So Dr. Ophoven has a little bit of a longer time window  
19 than the afternoon of May 1st, but I think the experts will  
20 agree there are some variables specific to each individual that  
21 influence the timeline, which makes, of course, the  
22 circumstantial evidence that the police developed much more  
23 relevant to the analysis.

24 Finally, in addition to the medical evidence -- because  
25 really this case comes down to three things: The

1 circumstantial evidence of Jones' guilt, the eye witness  
2 testimony from the Lopez children who saw him striking Rachel,  
3 and then the medical evidence as well.

4 And Mr. Sandman will attempt to discredit the eye witness  
5 testimony on various grounds. He'll call an individual named  
6 Mr. Gruen, and he'll opine that the Lopez children could not  
7 see the attack in the van. And you'll recall that the children  
8 testified that they were standing in a parking lot and saw  
9 Mr. Jones drive by in his car and saw him hitting Rachel Gray.  
10 I think after cross-examination of Mr. Gruen is complete, it  
11 will be clear that he can't conclusively say that the Lopez  
12 didn't see what they said they saw.

13 In addition, Jones has admitted that he was driving in that  
14 parking lot with his -- with Rachel in his yellow van. So the  
15 circumstantial evidence again corroborates what the Lopez  
16 children are saying, regardless of what Mr. Gruen says.

17 So at the end of the hearing we'll ask the Court to reject  
18 Mr. Jones' claim. With that, I will conclude and turn to the  
19 evidence, with the Court's permission.

20 THE COURT: Yes. Thank you.

21 Ready for your first witness? Or do you want a moment  
22 to shift gears?

23 MR. SANDMAN: Could we, Your Honor, please?

24 THE COURT: Okay. We are going to take a 10-minute  
25 break. Thank you.

1 (A recess was taken from 10:27 a.m. to 10:45 a.m.)

2 THE COURT: All right. Mr. Sandman, will you call  
3 your first witness.

4 MR. SANDMAN: Your Honor, we'll be calling Leslie  
5 Bowman.

6 THE CLERK: If you'll please step into the witness  
7 stand and remain standing to be sworn. Please raise your right  
8 hand.

9 **LESLIE BOWMAN, WITNESS, SWORN**

10 THE COURT: Mr. Sandman.

11 MR. SANDMAN: Thank you.

12 DIRECT EXAMINATION

13 BY MR. SANDMAN:

14 Q. Good morning.

15 A. Good morning.

16 Q. Could you state your name for the record, please.

17 A. Yes. My name is Leslie Bowman.

18 Q. Could you tell us, what is your current employment?

19 A. Currently, working as a United States Magistrate Judge.

20 Q. How long have you been in that position?

21 A. It's been about five and a half years.

22 Q. Can you tell us, when did you graduate from law school?

23 A. I graduated from law school in May of 1982.

24 Q. And when were you then admitted to the bar?

25 A. On May 15th of 1993.

1 Q. So you had a span there of a little over 10 years between  
2 graduation and obtaining your license to practice law?

3 A. Yes.

4 Q. You're a member of the Arizona bar?

5 A. Yes.

6 Q. Can you tell us, what was your first job after gaining  
7 admission to the bar?

8 A. I went into private practice with Sean Bruner.

9 Q. Did Mr. Bruner have an established practice at the time?

10 A. He did. He was practicing with a small firm, but he left  
11 that firm when we went into practice together.

12 Q. Was Mr. Bruner a law school classmate of yours also?

13 A. He was.

14 Q. So you established the firm in 1993?

15 A. Yes.

16 Q. And was the firm primarily, although not exclusively, a  
17 criminal defense firm?

18 A. Yes.

19 Q. Did the firm handle privately retained criminal matters?

20 A. Yes, it did.

21 Q. Did some of those privately retained criminal matters  
22 include drug cases?

23 A. Yes.

24 Q. Did Mr. Bruner have sort of a subspecialty in drug defense  
25 cases and drug forfeiture cases?

1 A. Yeah --

2 Q. Not specialty in the terms of being certified by the bar  
3 necessarily, but was that a concentration of his practice?

4 A. Yes.

5 Q. Was he working on a lot of those types of cases when you  
6 formed the partnership in '93?

7 A. I don't remember specifically, but he probably was.

8 Q. Okay. And could the fees paid into those privately  
9 retained drug cases go into the high five figures?

10 A. Yes.

11 Q. During the first couple of years of your practice, which  
12 would -- I think you'll likely tell us that's when you started  
13 representing Mr. Jones, was the firm generating those type of  
14 high fee cases and drug cases and forfeitures?

15 A. Yes, it was.

16 Q. You know you're here today to discuss your prior  
17 representation of Barry Lee Jones, is that right?

18 A. Yes.

19 Q. Did you represent him in connection with charges of the  
20 murder of Rachel Gray?

21 A. Yes.

22 Q. And associated charges of sexual and physical abuse?

23 A. Yes.

24 Q. And were you ever formally appointed to represent  
25 Mr. Jones?

1 A. I was not.

2 Q. Who was formally appointed to represent him?

3 A. Sean Bruner was the counsel that was appointed.

4 Q. Did you nevertheless assist Mr. Bruner in the  
5 representation of Mr. Jones?

6 A. I did.

7 Q. Prior to today, have you had the opportunity to review the  
8 Bruner and Bowman trial counsel file?

9 A. Yes.

10 Q. And you previously gave a deposition in this case, is that  
11 right?

12 A. Yes, I did.

13 Q. Did you have an opportunity to review your deposition and  
14 the attendant deposition exhibits?

15 A. I did.

16 Q. I want to show you a copy of the indictment, if we could,  
17 that was filed against Mr. Jones. Do you recognize that as the  
18 indictment filed against Mr. Jones in case CR-45587?

19 A. Yes, I do.

20 MR. SANDMAN: I might just say for the record that  
21 this is not part of the exhibits, Your Honor, but it is part of  
22 the state court record which the Court has in its entirety.

23 THE COURT: All right. So there is no exhibit number  
24 associated with this? Again, for purposes of the record, I  
25 want to make sure that we create a record that an appellate

1 court can follow. If it's part of another file, if you could  
2 sort of indicate precisely where that can be found.

3 MR. SANDMAN: Okay.

4 THE COURT: It is a part of the record in this case.

5 MR. SANDMAN: It is part of the record in this case  
6 and it's part of the state court trial record, which was  
7 delivered or caused to be delivered to this Court by the  
8 Arizona Supreme Court some years ago.

9 BY MR. SANDMAN:

10 Q. I may have asked you this, but do you recognize this as the  
11 indictment?

12 MR. SANDMAN: And can we see the next page? It goes  
13 onto the next page. Page 2. No?

14 BY MR. SANDMAN:

15 Q. While we're looking for that, the indictment charges that  
16 the sexual and physical abuse of Rachel occurred on or about  
17 May 1, 1994. Is that what it says?

18 A. Yes.

19 Q. Do you recall whether Mr. Jones was convicted of murder and  
20 the other charges in the indictment?

21 A. Yes, he was.

22 Q. And did you and Mr. Bruner both represent Mr. Jones at his  
23 trial?

24 A. We did.

25 Q. Do you recall where Mr. Jones was living at the time of



1 Rachel's death?

2 A. He was living in a trailer park on Benson Highway; I don't  
3 recall the exact address.

4 Q. Do you remember who he was living there with?

5 A. He was living with the mother of Rachel, which was Angela  
6 Gray. Also, I think Mr. Jones' daughter, Brandie. I'm not  
7 sure if she was there all the time, but she was there. And  
8 then Angela had two other children, I think Jonathan and Becky.  
9 Or Rebecca.

10 Q. In your review of the case materials, did that help refresh  
11 your memory of the areas of responsibility, the chief areas of  
12 responsibility, you had in connection with representation of  
13 Mr. Jones?

14 A. Yes, it did.

15 Q. Could you tell us what were the areas that you primarily  
16 focused on?

17 A. I was responsible for conducting the pretrial interviews of  
18 the witnesses. I contacted the investigator, at least one of  
19 the experts. There may have only been one. And also I had a  
20 fair amount of contact with Mr. Jones and with his family.

21 Q. Did you also attend some of the pretrial court hearings?

22 A. Yes, I did.

23 Q. I'd like to show you what's been marked as Exhibit 24A,  
24 which is -- obviously it's one of the admitted exhibits, and it  
25 is a transcript of a hearing dated June 22, 1994, which would

1 have been just probably about five weeks after -- six weeks  
2 after the indictment. Or after the arrest of Mr. Jones for the  
3 May 2nd death of Rachel. Is that right?

4 A. Yes.

5 Q. If you could turn to Page 2.

6 THE COURT: You said this is one of the admitted  
7 exhibits?

8 MR. SANDMAN: Yes, 24A.

9 THE COURT: That's fine. Go ahead.

10 MR. SANDMAN: Is there any way to make that bigger?  
11 Or is that as big as it...?

12 BY MR. SANDMAN:

13 Q. Do you see -- I'm looking at down around Line 8 there.  
14 Were you the attorney appearing for Mr. Jones at this hearing?

15 A. Yes, I was.

16 Q. Then down at around 18, if we could scroll down there. Do  
17 you see this is a pretrial conference hearing with the Court?

18 A. Yes.

19 Q. On the next page, Page 3, around Line 12 through 18. Lines  
20 12 through 18. Do you see there the Court has asked about the  
21 status of disclosure?

22 A. Yes.

23 Q. What is the Court referring to there, do you know?

24 A. I believe the Court was -- well, the discussion had to do  
25 with whether we'd received disclosure yet from the state.

1 Q. Okay. Is it part of the Arizona laws of a criminal  
2 procedure that the prosecution discloses all the police reports  
3 and other aspects of the investigation to defense counsel?

4 A. Yes.

5 Q. Ms. Mayer responds at page, excuse me, at Line 15. Who is  
6 Ms. Mayer?

7 A. I think that was Kathleen Mayer.

8 Q. Mayer. Sorry.

9 A. The prosecutor in this case.

10 Q. And she indicates that since the beginning of the month,  
11 which would be June, they started making their disclosure.  
12 Correct?

13 A. Yes.

14 Q. So there hadn't been any disclosure in May. They started  
15 disclosing, according to her, in June. Is that right?

16 A. I don't remember. And I am not sure if this was the  
17 initial disclosure or if she was just talking about what she  
18 disclosed --

19 Q. Okay.

20 A. -- that month. I can't remember.

21 Q. Fair enough. On Page 6 of this transcript, at the top of  
22 the page, there's a reference to setting a new trial date. Do  
23 you see that?

24 A. Yes.

25 Q. And the Court inquired -- or the Court noted a date of

1 October 11 and then inquired of you are you going to try the  
2 case or Sean, do you see that?

3 A. I do.

4 Q. Could you read into the record what your response was?

5 A. I responded: At this point I have handled the entire case,  
6 so I may be trying the case.

7 Q. So at least as of the June 22nd hearing, you believed or  
8 were forecasting that it might be you actually rather than  
9 Mr. Bruner who would be trying the case, is that right?

10 A. Yes.

11 Q. And you indicated that you had been handling the whole  
12 matter at least through May and most of June on your own. Had  
13 you ever represented a capital defendant on your own before?

14 A. No.

15 Q. Had you ever tried a capital case on your own before?

16 A. No.

17 Q. Was your law practice fairly busy at that point in time?

18 A. It was.

19 Q. Okay. I'd like to show you Exhibit 12, if we could bring  
20 that up.

21 THE COURT: Again, this is already admitted?

22 MR. SANDMAN: Yes, Your Honor. I'll only be referring  
23 to exhibits that have been admitted.

24 THE COURT: That's fine.

25 MR. SANDMAN: I'll be very careful not to refer to any

1 that have not been. But Exhibit 12, Your Honor, has been  
2 admitted, and this is the summary of the billing record. I  
3 wonder if we could make that -- enlarge that picture of the  
4 front page of the billing summary.

5 BY MR. SANDMAN:

6 Q. Do you see there, on the left-hand column, there's dates  
7 and descriptions of work?

8 A. Yes.

9 Q. If we can scroll down a little bit further to at least June  
10 22nd. There you go.

11 Do you see there's an entry there on June 22nd for  
12 appearance of pretrial conference?

13 A. Yes.

14 Q. So even though you were not appointed officially as counsel  
15 for Mr. Jones, is it true that you were recording your time and  
16 submitting that time as part of the billing that went to the  
17 Court in this matter?

18 A. Yes.

19 Q. Is it your -- is it true then that most -- at least most of  
20 the work done throughout May and June was done by you, is that  
21 right?

22 A. It must have been, yes.

23 Q. On the topic of billing, did the firm have -- what was the  
24 billing system in place for recording and tracking time?

25 A. We had -- we had time sheets. This was quite a long time

1 ago; everything was done by hand. But we had blank time sheets  
2 that we always had with us, whether that be at our desk or in  
3 our file. And when we performed a task, we would put the date,  
4 we would put the -- our file number, not the case number but  
5 our own file number. We would put our client's name, then a  
6 brief description of whatever the task was. And then, just  
7 like you see on Exhibit 12, we had it broken down by in court,  
8 out of court and different tasks, and then we would write a  
9 number, billing by point one or in six-minute increments.

10 Q. Okay. With respect to a lot of criminal matters -- not  
11 this case but on privately retained cases -- were those fees  
12 just sort of paid? They weren't hourly necessarily, were they?

13 A. No, they weren't. There was a retainer paid up front  
14 and....

15 Q. That was the fee.

16 A. That was the fee.

17 Q. And in appointed cases where you had to track time, did you  
18 make an effort to try to keep track of your time and document  
19 it appropriately?

20 A. Yes, we did.

21 Q. I'd like you to take a look at the last page of Exhibit 12.  
22 That would be Page 6. I wonder if we could scroll up just a  
23 bit so we could see the categories at the top of the page.  
24 Okay.

25 So this final page of the summary indicates some totals for

1 various things that were done in the case, various work  
2 performed. And you see -- I'd like to draw your attention to  
3 the bottom right-hand corner. Actually, the bottom left-hand  
4 corner, where it says total pretrial out-of-court time. On the  
5 bottom left side.

6 A. Yes.

7 Q. If you run over to the left-hand side you'll see 190. In  
8 this capital case there was 190.5 hours billed out of court.

9 A. Yes.

10 Q. Can you take that off the screen, please.

11 Do you see, with respect to out-of-court time, there was  
12 billing -- out of 190 hours, of all of the pretrial time, there  
13 are 50 -- a little over 50 hours for client contact and contact  
14 with the client's family, do you see that?

15 A. Yes.

16 Q. That's in the second column over from the right -- left.  
17 Do you see that column?

18 A. Yes.

19 Q. As between you and Mr. Bruner, was that mostly your time?

20 A. Probably, it was.

21 Q. Because you were spending more time with the client?

22 A. Yes.

23 Q. And his family?

24 A. Yes.

25 Q. And then I note there is some -- in addition, there is a

1 column right in the middle or toward the right. Amanda Gray

2 Trial. Do you see that? Attended Gray trial.

3 A. Yes.

4 Q. With 17.6 hours?

5 A. Yes.

6 Q. In your review of the record in this case, have you had --

7 determined who, between you and Mr. Bruner, attended that

8 trial?

9 A. I believe that was me.

10 Q. So you did that. And then there was a -- there was witness

11 interviews in the case of 39 -- I guess it was 39.3 hours. Was

12 that substantially all your time in the case, interviewing the

13 witnesses?

14 A. I think it was.

15 Q. If you total those up, that's about half the time of the

16 pretrial time, is that right?

17 A. You're asking me to do math. Can you remind me what you're

18 asking me to total?

19 Q. It was 190 hours.

20 A. Okay. And you're asking for the total of the client and

21 family contact with the witness interviews?

22 Q. And attending the Gray trial.

23 A. Yes.

24 Q. Did you also do some legal research and writing on the

25 case?



1 A. I don't remember that.

2 Q. And did you -- in order to do the witness interviews, did  
3 you have to review records?

4 A. Yes.

5 Q. What is the total amount of out-of-court time on record  
6 review on the billing?

7 A. 45.6.

8 Q. 45.6 hours?

9 A. Yes.

10 Q. Do you recall George Barnett?

11 A. Yes.

12 Q. I'd like to -- tell me what you recall about Mr. Barnett  
13 and his role in this case?

14 A. I remember that we contacted him early on and asked him to  
15 help us with the investigation.

16 Q. And do you remember -- well, let me withdraw that.

17 Let's take a look, if we could, at Exhibit 16, which is in  
18 evidence. If we could enlarge that somewhat. If you could  
19 scroll down.

20 Do you recognize Exhibit 16 as a report dated May 19, 1994,  
21 you received from Mr. Barnett?

22 A. Yes.

23 Q. As part of your preparation, or as part of your review of  
24 the record in this case, have you recently reviewed this  
25 document?

1 A. Yes.

2 Q. I'd like to walk through some of this document in terms  
3 of -- so we can establish some of the things that you learned  
4 from Mr. Barnett and get those on the record.

5 Do you see in the first paragraph that Mr. Barnett  
6 indicates that he received the inquiry regarding this case from  
7 you rather than Mr. Bruner?

8 A. Yes.

9 Q. And at the bottom of the first paragraph he indicates that  
10 he actually had a conference with you on May 9th, 1994,  
11 correct?

12 A. Yes.

13 Q. That would have been less than a week after you were  
14 appointed to represent Mr. Jones. Excuse me, after Mr. Bruner  
15 was appointed.

16 A. Correct.

17 Q. It indicates after the meeting he went out to 4501 East  
18 Benson Highway. Do you see that in the middle -- in the second  
19 paragraph?

20 A. Yes.

21 Q. If we could scroll down a little bit to look at that bottom  
22 paragraph. Mr. Barnett made contact with a Judy Chavez, who is  
23 the manager at Desert Vista Apartments.

24 A. Yes.

25 Q. She informed Mr. Barnett that Mr. Jones had lived in the

1 trailer park for about five years.

2 A. Yes.

3 Q. She indicated that he was very quiet and polite.

4 A. She did.

5 Q. And that -- near the bottom of the page, I think the last  
6 sentence there, that she said quite some number of the children  
7 in the trailer park all seemed to like him very much.

8 Referring to Mr. Jones.

9 A. Yes.

10 Q. And she told him that he was well liked by all the children  
11 and that they tended to congregate in the area near his  
12 residence, do you see that?

13 A. Yes.

14 Q. Also at the very bottom of the page, she noted that it was  
15 only five weeks prior to May 9th, which would have been early  
16 April, that Angela had moved into the trailer.

17 Can we see the next page. I think that's the last line of  
18 that -- Page 1.

19 Did you see the reference to Angela moving in in early  
20 April?

21 A. Yes.

22 Q. Okay. In the top paragraph there, do you see Ms. Chavez  
23 makes a reference at the bottom of the first full paragraph  
24 that Angela was frequently yelling at the children when Barry  
25 was not present at the residence?

1 A. Yes.

2 Q. And also, in the next paragraph, do you see that Ms. Chavez  
3 indicates that she saw Rachel with two black eyes?

4 A. Yes.

5 Q. And that she had been informed that Rachel tripped over a  
6 dog?

7 A. Yes.

8 Q. Then the next person that Mr. Barnett interviewed was  
9 indicated at the bottom of that page, Page 2. That he  
10 contacted the occupant of Trailer 22, a Susan Hopkins, who  
11 lived directly south of Mr. Jones.

12 A. Yes.

13 Q. And did Ms. Hopkins inform Mr. Barnett that she had also  
14 known Mr. Jones for five years?

15 A. Yes, she did.

16 Q. And did she tell Mr. Barnett that Mr. Jones was extremely  
17 nice to all the kids in the park?

18 A. Yes.

19 Q. And at the bottom of that page, did she also reiterate that  
20 Angela had just moved in four to five weeks prior?

21 A. Yes, she did.

22 Q. And the next page.

23 And that Angela is always screaming at their four children,  
24 that's at Page 3, when Barry was not present. Do you see that?

25 A. Yes.

1 Q. So now you have at least two people telling Barnett that  
2 there's -- some of Angela's behaviors in respect to the  
3 children that only happen when Barry is not there, is that  
4 right?

5 A. Yes, it is.

6 Q. In the top paragraph there, Ms. Hopkins says that she's  
7 observed Ms. Gray threaten the children with bodily harm. Do  
8 you see that at the top of the page there?

9 A. Yes.

10 Q. Then in the next paragraph, on Page 3, around the middle of  
11 that paragraph, Ms. Hopkins indicates, in recounting her five  
12 years of knowing this man, that he was extremely docile with  
13 the children, and that all the parents felt very secure with  
14 their children playing in the area when Barry was present. Do  
15 you see that?

16 A. I do see that.

17 Q. Then on the next paragraph, where it says Susan Hopkins'  
18 personal opinion. If we could scroll down. Indicated that  
19 Angela was a screamer. Do you see that? And that Barry would  
20 leave when she became overly aggressive. Do you see that?  
21 Further down in that paragraph?

22 A. Yes, I do.

23 Q. Then the final person that Mr. Barnett spoke to in the  
24 trailer park was a Shirley DeVous, from Space 24, who lived  
25 directly north of Mr. Jones. Do you see that?

1 A. Yes.

2 Q. She indicated to Mr. Barnett that from the time that Angela  
3 moved into the -- Mr. Jones' trailer, that she did not let her  
4 kids play with others near Barry's residence. Do you see that?

5 A. I do.

6 Q. She also, by the way, ratified that Angela had only been  
7 there four or five weeks, correct?

8 A. Yes.

9 Q. And Ms. DeVous stated that, quote, Angela yelled and was  
10 abusive towards the children. Do you see that?

11 A. I do.

12 Q. And she went on to describe Mr. Jones as an extremely good  
13 person with all the kids, including her daughters, is that  
14 right?

15 A. Yes.

16 Q. She recounts that Mr. Jones went out of his way to help  
17 people in the trailer park?

18 A. Yes, she did.

19 Q. And the next page.

20 At the top of the next page, Ms. DeVous, like Mr. Jones'  
21 other neighbor, Ms. Hopkins, described Angela as a screamer?

22 A. Yes.

23 Q. And in that paragraph she indicates to Mr. Barnett, a few  
24 lines down, that Barry would never strike anybody. Do you see  
25 that?

1 A. Yes.

2 Q. Then if we go down a little bit further. I want to ask  
3 you -- this is the second to the last paragraph on the page.  
4 So we have to go down to the -- down the page.

5 There is a discussion in this paragraph specifically about  
6 Sunday, May 1st, 1994. Do you see that?

7 A. I do.

8 Q. And Barnett learns from Ms. DeVous that she had observed  
9 the kids playing in that area. They were all playing around  
10 the front of Mr. Jones' trailer, which was not unusual. Right?

11 A. Right.

12 Q. And she said she observed Rachel specifically in the late  
13 afternoon.

14 A. Yes.

15 Q. Does she anywhere in her description of Rachel there, in  
16 late afternoon, indicate that Rachel looked like she had been  
17 physically beaten and sexually assaulted in the late afternoon?

18 A. No. She said she seemed to be happy and in good spirits  
19 with no physical difficulties.

20 Q. Then on the final paragraph, Mr. Jones' neighbor here,  
21 Ms. DeVous, tells Mr. Barnett Barry would hardly, or never,  
22 raise his voice to children, and was probably more tolerant  
23 than any other individual in the entire trailer park, and never  
24 abused children in any manner. Do you see that?

25 A. Yes.

1 Q. Now, this -- had you been out to that trailer park when you  
2 represented Mr. Jones?

3 A. During the representation. Maybe not before this, but,  
4 yes, I was.

5 Q. This was a lower economic type area in Tucson?

6 A. Yes.

7 Q. And amongst all the people living in the trailer park,  
8 Mr. Barnett learned from Ms. DeVous that he's more tolerant  
9 than anybody else living there, is that right?

10 A. Yes.

11 Q. Now, next page. In the second paragraph, Ms. DeVous  
12 recounts that, over Angela's objection, Barry -- excuse me.  
13 Well, she says Barry would never hurt a child, in the second  
14 paragraph.

15 I want to scroll down now to the second to the last  
16 paragraph, because that gets back to Sunday afternoon, May 1st.

17 She says, concerning Sunday afternoon, May 1st, she had  
18 observed Rachel on a bike around 3:00 to 4:00 p.m. Do you see  
19 that?

20 A. Yes.

21 Q. Again, no indication that Rachel looked like someone had  
22 harmed her that late afternoon, is that right?

23 A. That's correct.

24 Q. Now, if we could go to the next page, Page 6. The last  
25 paragraph.



1 In that paragraph, Mr. Barnett indicates that he had  
2 returned to the office and spoke with Joe Chavez, who  
3 co-managed the property with Judy Chavez. That was the -- Judy  
4 was the first person named in the report, right?

5 A. Yes.

6 Q. And in the interview, Mr. Barnett's interview of Joe  
7 Chavez, he states, quote: He was aware that a two-year-old  
8 boy, who was slightly large for his age, had struck Rachel in  
9 the stomach with either a stick or an iron bar. Do you see  
10 that?

11 A. I do.

12 Q. Mr. Chavez goes on to inform Mr. Barnett that the mother of  
13 the two-year-old boy, Stephanie Fleming, actually packed her  
14 things the morning of May 2nd when she heard about Rachel's  
15 death and moved within two hours without notifying the office.  
16 Do you see that?

17 A. I do.

18 Q. And Mr. Chavez says that -- this is about five lines from  
19 the bottom -- that he was informed by neighbors that Fleming  
20 was scared to death after hearing about the arrest and was  
21 further concerned that not only would Child Protective Services  
22 become involved concerning her children, but she was apparently  
23 in great fear that her son would be responsible for some of the  
24 injuries received by Rachel on Sunday. Do you see that?

25 A. Yes, I do.

1 Q. Now, do you know or did you ever ask Mr. Barnett to find  
2 out who those neighbors were, the neighbors that informed  
3 Mr. Chavez for Ms. Fleming's motivation to pack up within two  
4 hours of learning of Rachel's death and moving out?

5 A. I don't remember, but I think if I had, there would have  
6 been some kind of report about that.

7 Q. If you had done it there would be a report. And if there  
8 is not a report, then you hadn't done it. Is that what you're  
9 saying?

10 A. That's probably true.

11 Q. He goes on to say, at the bottom of Page 3, it was  
12 indicated that Stephanie Fleming may have somehow intervened  
13 between her two-year-old son -- we have to go onto the next  
14 page -- and Rachel (phonetic) may have herself created some  
15 type of assault on Rachel late the afternoon of Sunday, May  
16 1st, and was therefore afraid for her own welfare and did not  
17 wish to get mixed up with the police. Do you see that?

18 A. Yes, I do.

19 Q. Do you recall having Mr. Barnett follow up on that part of  
20 the investigation to find out who was it that said that  
21 Ms. Fleming was concerned that she might be implicated in  
22 harming Rachel?

23 A. I don't remember asking for follow-up.

24 Q. Then at the bottom of that first paragraph on Page 7,  
25 Mr. Chavez stated that Stephanie was hiding out and acting

1 weird when officers came to the apartment complex to speak with  
2 tenants. Do you know whether Mr. Barnett was ever instructed  
3 to follow up to see who could ratify that behavior?

4 A. I don't remember asking for that.

5 Q. Then in the next paragraph on Page 7, Mr. Barnett asked  
6 Mr. Chavez if he had heard anything about Rachel falling out of  
7 a van, and he stated, yes, that he had heard this from several  
8 different sources. Do you see that?

9 A. Yes.

10 Q. Did you ever -- to your knowledge, had Mr. -- did you ever  
11 ask Mr. Barnett to follow up with respect to who those sources  
12 were?

13 A. I don't remember asking him to do that.

14 Q. Then finally at the bottom of that paragraph, Mr. Chavez  
15 also says that Mr. Jones was very tolerant of the children in  
16 the trailer park.

17 A. Yes, he did say that.

18 Q. Now, the last paragraph of Page 7, Mr. Barnett indicates  
19 that he next left the premises to a different location on  
20 Benson Highway to speak to a Patty Bennett?

21 A. Yes.

22 Q. Who was the previous manager of the trailer park.

23 A. Yes, he did.

24 Q. And she had known Mr. Jones for approximately four years,  
25 is that right?

1 A. Yes.

2 Q. And the next page. Starting from the middle paragraph on  
3 down. Let me just go down from where you are on the page.

4 Okay. This is Page 8 of Exhibit 16.

5 Mr. Barnett here learned about some information about the  
6 man who Angela lived with before she lived with Barry, a guy  
7 named Zoly. Do you see that?

8 A. Yes.

9 Q. And in the third paragraph on Page 8, Ms. Bennett informed  
10 Mr. Barnett that, quote, Angela was afraid of Zoly and made  
11 contact with a third party to go over and take her children  
12 away from Zoly. Do you see that?

13 A. Yes.

14 Q. Did you ever ask Mr. Barnett to find out or to investigate  
15 that point, as to the possibility that this Zoly fellow may  
16 have been abusive or harmed any of the children?

17 A. I don't remember if we asked him to do that. I saw some  
18 things in my notes that talked about trying to locate him, but  
19 I don't think that was through Mr. Barnett because there is no  
20 report.

21 Q. Now, at the very final -- let me just ask you, do you  
22 believe that Mr. Barnett provided you with some information  
23 that was deserving of further investigation in this report?

24 A. Yes.

25 Q. If I could have you -- I'd like to turn to Page 15 of the

1 report, which is where the report ends. Page 15.

2 I wanted to ask you about the large paragraph.

3 If we could enlarge that. We need to scroll down a little  
4 bit to see it.

5 In the final paragraph, Mr. Barnett reports that he had a  
6 debriefing with you on May 18, 1994. Do you see that?

7 A. Yes.

8 Q. And it was indicated to Mr. Barnett that the amount set  
9 aside for time, milage and expenses concerning the  
10 investigation had become financially infeasible, and so he was  
11 basically told to stand down at that point. Is that right?  
12 That's what he reports.

13 A. Yes.

14 Q. Now I want to show you what's in evidence as Exhibit 20.  
15 If we could enlarge that. Exhibit 20, in evidence, is a motion  
16 for appointment of investigator. It is shown in the upper  
17 right-hand corner as filed July 14, 1994.

18 Have you seen this document previously?

19 A. I have.

20 Q. If we could scroll down the page.

21 First of all, this motion seeks the appointment of an  
22 investigator, is that right?

23 A. Yes.

24 Q. At the bottom of the page it indicates that the  
25 investigator has billed \$445 for services rendered?

1 A. Yes.

2 Q. There's a statement attached actually to. It, we'll get to  
3 that. But the motion then goes on to say he's located and  
4 interviewed potential witnesses that have provided information  
5 relevant to possible -- we need to go to the next page, at the  
6 top of the page. So the sentence that I was just reading goes  
7 on to say that Mr. Barnett had interviewed and located  
8 potential witnesses that have provided information relevant to  
9 possible defenses in this case.

10 Would you agree that the initial report did accomplish  
11 that, the one that we just read, Exhibit 16?

12 A. Yes, it did.

13 Q. Then this motion goes on to say there remains several  
14 unanswered questions and several potential witnesses that have  
15 not been located. This information is critical to the defense.  
16 Do you see that?

17 A. Yes.

18 Q. Then there's a reference to the fact that Mr. Barnett is  
19 willing to continue to work on the case.

20 A. Yes.

21 Q. Then if we can go to Page 4 of this document. The next  
22 page. You've got to keep going until you get to the bill.  
23 It's the second to the last page of the document.

24 While we're looking for that, in your examination of the  
25 file, the trial counsel file, did you find any evidence that

1 Mr. Barnett had ever done any additional work on the case after  
2 the filing of this July 14, 1994 motion?

3 A. I think it was after that that we asked him to take some  
4 measurements of the van.

5 Q. Did you find any evidence though that he had ever tracked  
6 down witnesses that were, according to this motion in Exhibit  
7 20, that were critical to the defense?

8 A. No.

9 Q. And if he did do that work, should there be some evidence  
10 either in your file, as well as the court file, containing the  
11 billing records of investigators and experts?

12 A. Yes.

13 Q. And do you have any explanation for why additional work  
14 product for Mr. Barnett does not appear in either the Superior  
15 Court record or in your file?

16 A. No.

17 Q. We finally pulled up the attachment to Exhibit 20.

18 I was going to ask you, does this look -- is this the  
19 billing that was initially submitted for the work Mr. Barnett  
20 did in early May, '94?

21 A. That's what it appears to be.

22 Q. If we could take a look at Exhibit 21, please.

23 Exhibit 21 is an order that was filed in the state court  
24 proceedings in Mr. Jones' case, dated July 14, 1994, and can  
25 you tell us what this order is?

1 A. It indicates that the Judge approved \$500 or authorized  
2 \$500 to be paid for the investigator.

3 Q. I want to turn now to Exhibit 24D, as in "David."

4 Exhibit 24D is a transcript from the proceedings in the  
5 state court in Mr. Jones' case dated July 14, 1994.

6 If you could take a look at Page 2. Did you review this  
7 document as part of your review of the record in connection  
8 with these proceedings?

9 A. Yes.

10 Q. At the first page the Judge notes, at Line 13, there's a  
11 serious question in front of him, is that right?

12 A. Yes.

13 Q. Then if we go ahead to -- well, I'm at Page -- is it  
14 Ms. Mayer? I always pronounce her name wrong.

15 A. Yes.

16 Q. At Line 17, she says that we knew that something was in the  
17 works because there had been a request not to release the body.  
18 Do you see that?

19 A. Yes.

20 Q. Is it your understanding based on your review of the record  
21 and this transcript that now some -- over two months after  
22 Rachel's death that she had not -- her remains had not been put  
23 to rest. Is that right?

24 A. Yes.

25 Q. And then at -- then on the next page, Mr. Bruner tells the



1 Court that essentially that he needs an expert --

2 THE COURT: I'm sorry, what line are you on?

3 MR. SANDMAN: Starting at Line 8.

4 THE COURT: Could you indulge me and make it a little  
5 bigger? Because I'm having a hard time seeing.

6 MR. SANDMAN: Yeah, we'll need to enlarge that. Just  
7 really from Line 10 to the bottom, if we could enlarge that.

8 THE COURT: Thank you.

9 MR. SANDMAN: So we'll need to get the bottom half of  
10 that page.

11 BY MR. SANDMAN:

12 Q. So if we look at -- starting at actually Line 11,  
13 Mr. Bruner indicates that he needs somebody independent to  
14 review the autopsy report. Do you see that?

15 A. Yes.

16 Q. And he goes on to say that he doesn't want to have another  
17 autopsy done unless it would be absolutely necessary. Correct?

18 A. Correct.

19 Q. And he notes at Line 21 that in the past what we had been  
20 able to do was to get them to release the slides of the tissue  
21 sections and whatever they use in determining this, just have  
22 the report and those slides reviewed by somebody else, and he  
23 would like that done. Is that what he tells the Court?

24 A. Yes, it is.

25 Q. Then on the next page, Page 4, at the top of the page.

1 Mr. Bruner went on to say, that, quote, the sooner we can get  
2 that done, the sooner we can -- I mean, I certainly don't want  
3 to be the person who is holding up the burial of this baby, you  
4 know, just a standard request.

5 So was it a priority at least at the time of this hearing  
6 to get somebody to advise you whether the body could be  
7 released or whether another autopsy would need to be done  
8 first?

9 A. Yes.

10 Q. And at Page 5, if we could go there. And scroll down just  
11 a bit. Line 7. The Judge authorizes a maximum of a thousand  
12 dollars, and indicates that he's appalled that the burial has  
13 been pending, correct?

14 A. That is correct.

15 Q. If we could see Exhibit 22. And make that a little bigger  
16 so we can see it. Just the bottom. From around the middle of  
17 the page down.

18 MR. SANDMAN: This is in evidence, Your Honor.  
19 Exhibit 22 is a minute entry, July 14, 1994. We need to scroll  
20 down so we can see what it says.

21 THE COURT: For the record, what page of this exhibit  
22 are you on?

23 MR. SANDMAN: This is Page 1 of exhibit.

24 THE COURT: Thank you.

25 MR. SANDMAN: Exhibit 22.

1 BY MR. SANDMAN:

2 Q. At the very top of the minute entry there, it says:

3 Hearing Re Defendant's Motion for Appointment of

4 Investigator/Ex Parte Motion for Appointment to Review Autopsy.

5 Is that right?

6 A. Yes.

7 Q. And the Court authorized a thousand dollars for that -- for  
8 someone to review the autopsy, is that right?

9 A. Yes, he did.

10 Q. Now, as part of your review of the trial file, did you  
11 review -- have an opportunity to review again the autopsy that  
12 was done in this case by Dr. John Howard?

13 A. I did.

14 MR. SANDMAN: Can we see Exhibit 52, please.

15 BY MR. SANDMAN:

16 Q. Exhibit 52 is in evidence as the autopsy performed on  
17 Rachel Gray, May 3, '94. Can we go to the next page? We'll  
18 need to enlarge that top half of the page. Scroll down just a  
19 little bit more.

20 Do you recognize this portion of the autopsy as describing  
21 the injuries that were determined for Rachel at the time of the  
22 autopsy?

23 A. Yes.

24 Q. Can you scroll down a little bit further, please, on the  
25 document. You can see there the ultimate opinion of

1 Dr. Howard, the death was caused by small bowel laceration due  
2 to blunt abdominal trauma. It was signed by John Howard,  
3 right?

4 A. Yes, it is.

5 Q. In your recent examination of this report, did you see  
6 anything in the report where Dr. Howard described, in terms of  
7 hours or days, the time between the infliction of Rachel's  
8 injuries and her death?

9 A. No, there's nothing in there like that.

10 Q. We'll take a look next at Exhibit 58. If we could blow up  
11 the top half of that page.

12 Do you recognize what this is?

13 A. Yes, it's a fax cover sheet.

14 Q. And it's dated August 10, 1994?

15 A. Yes, it is.

16 Q. So this would have been a few weeks after that July 14  
17 hearing, where there was some expressed concern about getting  
18 the autopsy reviewed so we could decide -- so it could be  
19 decided whether Rachel's body could be buried. Is that right?

20 A. Yes.

21 Q. The fax cover sheet indicates that there's a transmission  
22 from Bruner & Bowman, re Rachel Gray autopsy, 10 pages. Is  
23 that right?

24 A. Yes.

25 Q. Can we see the next page. If we could scroll up just a

1 bit. The second page of this exhibit, 58, if we could go up to  
2 see the letterhead on the document.

3 Can you identify the second page of this exhibit?

4 A. Yes. It's a letter sent on July 20th, 1994, to Dr. Keen.

5 Q. Did you send this letter? Or did you sign it?

6 A. I did.

7 Q. If we could scroll down on that first -- further down on  
8 the page.

9 This letter addressed to Dr. Keen, do you remember who  
10 Dr. Keen was?

11 A. I think -- I am not sure if he was the Maricopa County  
12 medical examiner, but he was some type of a forensic expert in  
13 Phoenix.

14 Q. In the first paragraph of the letter, you thank him for  
15 agreeing to review the autopsy report, correct?

16 A. Yes.

17 Q. Then you indicated to him that you had several questions,  
18 and that when you next discuss the case, you hope to be able to  
19 ask for more specific information. Do you see that?

20 A. Yes.

21 Q. Then you confirm with him that Dr. Keen has explained to  
22 you that his review may involve obtaining access to  
23 photographs, slides, and other physical evidence. Is that  
24 right?

25 A. Yes.

1 Q. And you indicated that can be arranged.

2 A. Yes.

3 Q. Then you pose a series of questions, including in Paragraph

4 2: How long after the injury occurred would this child die?

5 Do you see that?

6 A. Yes.

7 Q. You also posed a question: Can the injury be dated?

8 Correct?

9 A. Yes.

10 Q. Then at the bottom of the page you ask him if the injury to  
11 the genitalia can be dated.

12 A. Yes.

13 Q. Let's go on to the next page. I think, as you indicated,  
14 that on the second page you were the one who signed the letter.

15 A. That's correct.

16 Q. Now, in the letter, did you inform Dr. Keen of any findings  
17 that Dr. Howard had made, if any, regarding the time between  
18 Rachel's injuries and her death?

19 A. No.

20 Q. Do you know, from your review of your own file, could you  
21 identify any evidence that at least at the time you wrote this  
22 letter in January of '94 that you had any information at all  
23 from Dr. Howard as to the timing of the injuries? At least as  
24 far as Dr. Howard was concerned?

25 A. Not that I'm aware of.

1 Q. Based on your examination of the file, did you find any  
2 evidence that during the time that you represented Mr. Jones  
3 that Dr. Keen had ever been informed of Dr. Howard's specific  
4 findings as to the time between infliction of injuries and  
5 Rachel's death?

6 A. I didn't find anything like that.

7 Q. Did you find any evidence in your file suggesting that  
8 Dr. Keen agreed or disagreed with any findings that Dr. Howard  
9 ultimately made regarding the timing of the injuries?

10 A. I did not find anything like that.

11 Q. We talked a few minutes ago about the motion that was filed  
12 as to a need for further fact investigation by Mr. Barnett, and  
13 I think you indicated you could not confirm that had ever been  
14 done. Do you remember that?

15 A. Yes.

16 Q. In your examination in the file, could you find any  
17 evidence that Dr. Keen had actually reviewed tissue slides or  
18 done any additional work other than reviewing the autopsy in  
19 this case?

20 A. No.

21 Q. Now, do you remember looking at a billing entry that you  
22 made for a telephone call with Dr. Keen in this case?

23 A. Yes.

24 Q. Can we see Exhibit 12? We need to be on the second page of  
25 that exhibit. Near the top half of the page, for an August 18,

1 1994 date. If we could just enlarge that, maybe we can see it.

2 Do you see the entry on August 18, 1994?

3 A. Yes.

4 Q. It indicates a telephone conference with Dr. Keen and a  
5 charge of .7 hours?

6 A. Yes.

7 Q. Do you remember anything about that call?

8 A. I don't.

9 Q. I assume that means you don't know who participated in that  
10 call, whether it was you or Mr. Bruner or anything else about  
11 it?

12 A. I don't have a specific memory of that. I assume it's me,  
13 since I was the one having contact with him. But that may or  
14 may not be correct.

15 Q. I'd have to you I'd like to have you look at Exhibit 36.  
16 If we could scroll down.

17 Exhibit 36 is a letter to Dr. John Howard from the Pima  
18 County Attorney's Office dated August 22, 1994, just a few days  
19 after you had your phone call with Dr. Keen. Is that right?

20 A. Yes.

21 Q. In this August 22 letter, in Exhibit 36, Dr. Howard is  
22 informed that defense counsel have agreed to allow the release  
23 of Rachel Gray's body. Do you see that?

24 A. Yes.

25 Q. My question to you is: Can you rule out the possibility



1 that all that you talked about with Dr. Keen during the  
2 single .7-hour conversation you had with him was whether he  
3 agreed with the -- essentially with the autopsy and that the  
4 body could be released?

5 A. I cannot rule that out.

6 Q. Have you had an opportunity previously to review the  
7 billing records to see whether there were any further billing  
8 charges associated with Dr. Keen?

9 A. I have reviewed them.

10 Q. Did you see any further billing charges associated with  
11 Dr. Keen?

12 A. Not that I can recall.

13 Q. Did you find in your review of the file that you had any  
14 further communication or contact with Dr. Keen whatsoever?

15 A. I don't -- I don't think I did.

16 Q. Now I'd like to have you look next at Exhibit 54.

17 MR. SANDMAN: Exhibit 54 is in evidence, Your Honor.  
18 It is actually the emergency room hospital record dated May  
19 2nd, 1994, in connection with Rachel's admission to the  
20 hospital at Kino Hospital here in Tucson.

21 BY MR. SANDMAN:

22 Q. Have you seen this record previously?

23 A. Yes, I have.

24 Q. Do you see at the top of the page, under arrival time, it  
25 says May 2nd, '94, at 0616?

1 A. Yes.

2 Q. So arrived at the hospital at a little after 6:00 a.m., is  
3 that right?

4 A. Yes.

5 Q. Down further on the page, on the left-hand side, it says  
6 DOA, do you see that?

7 A. Yes.

8 Q. So Rachel was already deceased at the time she went to the  
9 hospital.

10 A. Yes.

11 Q. And at that time -- obviously that document doesn't  
12 indicate when -- anything regarding the timing of the injuries  
13 that were inflicted on Rachel, does it? At least that  
14 document, does it?

15 A. No, it doesn't.

16 MR. SANDMAN: Can we take a look at Exhibit 63.

17 Let me identify Exhibit 63 that's in evidence. We've used  
18 this document, Your Honor, at some of the depositions, but what  
19 it is, it's the Arizona Supreme Court direct appeal decision in  
20 Mr. Jones' case.

21 BY MR. SANDMAN:

22 Q. Is that what you recognize it as?

23 A. Yes.

24 Q. In your recent review of the record have you looked at this  
25 opinion again?

1 A. I have.

2 Q. Can we take a look at Page 5? Okay. If we could enlarge  
3 the couple of paragraphs that are on the right side, the  
4 right-side column, the first couple of paragraphs there, so we  
5 can see it.

6 Ms. Bowman, there at the beginning of the opinion, the  
7 Arizona Supreme Court summarizes some of the facts, key facts,  
8 in Mr. Jones' case, is that right?

9 A. Yes.

10 Q. The Court describes, in the first full paragraph in that  
11 right-hand column, that on the day preceding her death, Rachel  
12 was hit many times, one blow to her abdomen was so severe that  
13 it ruptured her small intestine. And then the Court goes on to  
14 describe her other injuries inflicted on the day prior to her  
15 death. Correct?

16 A. Yes.

17 Q. Then in the next paragraph the Court describes what linked  
18 Mr. Jones to the crime, and they refer to the fact that  
19 Mr. Jones left his trailer three times and the two children saw  
20 defendant hitting her while he drove, that the defendant  
21 stopped at a Quik Mart to get ice for Rachel's head injury, and  
22 police found traces of Rachel's blood type on defendant's  
23 clothing and in his van. Do you see that?

24 A. Yes.

25 Q. You understand, or do you understand, that to describe some

1 of the key evidence that led to Mr. Jones' convictions?

2 A. Yes.

3 MR. SANDMAN: Judge, I'm at a point a fairly good  
4 stopping point. I know we have five minutes left 'til noon,  
5 but it might --

6 THE COURT: Okay. We'll break for lunch and we will  
7 resume at 1:00 o'clock.

8 MR. SANDMAN: Thank you, Judge.

9 THE COURT: Thank you.

10 (A recess was taken from 11:55 a.m. to 1:23 p.m.)

11 THE COURT: All right. Mr. Sandman, you may continue.

12 MR. SANDMAN: Thank you, Your Honor.

13 BY MR. SANDMAN:

14 Q. When we left off, where we left off at the lunch break, I  
15 think we were looking at the Arizona Supreme Court direct  
16 appeal opinion in Mr. Jones' case.

17 A. Yes.

18 Q. I think you had just testified that part of the factual  
19 rendition in the case by the Arizona Supreme Court was based on  
20 the assumption that all of Rachel's injuries were inflicted on  
21 the day prior to her death, is that right?

22 A. Yes.

23 Q. I'd like to show you a portion of the opening statement  
24 that Mr. Bruner made at Mr. Jones' jury trial, which is in  
25 evidence as Exhibit 28.

1           You can see there, that's Jury Trial Day 2, April 6, 1995.

2   Do you see that?

3   A.   Yes.

4   Q.   I'd like to draw your attention to Page 5.  Actually, it's  
5   Page 60 of the transcript, but it's Page 5 in this PDF series.

6           THE COURT:  Just to be clear, you're saying it's Page  
7   5 of the exhibit or Page 5 of something else?  I want to make  
8   sure we are clear about what --

9           MR. SANDMAN:  It's Page 5 of the exhibit.

10          THE COURT:  Okay.  Go ahead.

11   BY MR. SANDMAN:

12   Q.   It's recorded on what was Page 60 of the transcript for  
13   that day.  I want to just draw your attention to that middle  
14   paragraph there.

15          This is Mr. Bruner telling the jury that everything in this  
16   case is going to center around what happened on Sunday, May  
17   1st.  Specifically, a couple of disputed hours after Barry woke  
18   up in the morning and the children were already up around the  
19   house.

20          If we can go down a little bit further to pick up the rest  
21   of that paragraph so we can see the whole sentence.

22          Ms. Bowman, did you have an understanding at the time the  
23   trial began that the state was going to present evidence that  
24   Mr. Jones inflicted Rachel's injuries when he was alone with  
25   her on Sunday afternoon, May 1st?

1 A. Yes.

2 Q. Necessarily, would it have been reasonable to anticipate  
3 that the state would present medical evidence that Rachel's  
4 injuries could be dated to that time period?

5 A. Yes, it would.

6 Q. Is it a fact that at the trial the state did present  
7 evidence from Dr. Howard that all of Rachel's injuries, her  
8 small bowel injury, the injury to her vagina, her scalp injury,  
9 much of the bruising could be dated as consistent with  
10 infliction on the afternoon of Sunday, May 1st?

11 A. Yes.

12 Q. Did the defense challenge any of that evidence on  
13 cross-examination of Dr. Howard? The time of injury evidence?

14 A. I don't believe it was challenged.

15 Q. Would you like to take a look at the couple of pages of  
16 transcript?

17 A. Yes.

18 Q. If we could look at Exhibit 47. Do you recognize this,  
19 Ms. Bowman, as the trial transcript for Mr. Jones' jury trial  
20 dated April 12, 1995?

21 A. Yes.

22 Q. We're going to go to the transcript pages, beginning with  
23 158. Do you see that this is the cross-examination that  
24 Mr. Bruner did of Dr. Howard?

25 A. Yes.

1 Q. When you're ready to go to the next page, there's only  
2 about two and a half pages of transcript for cross-examination.  
3 Let me know if you're ready to go to the next page, 159.

4 A. I'm sorry. Can you remind me what you're asking me to look  
5 for?

6 Q. My question was whether any questions were posed on  
7 cross-examination challenging Dr. Howard's timing of Rachel's  
8 injuries.

9 A. Not in these pages.

10 Q. Do you believe that the state's unchallenged medical  
11 evidence provided a strong circumstantial link tying Mr. Jones  
12 to the infliction of Rachel's injuries on the afternoon of May  
13 1st?

14 A. It did.

15 Q. With that, I am going to ask you some questions about what  
16 the defense team did to prepare in light of the expectation  
17 that the state would present medical evidence to tie Mr. Jones  
18 to the commission of those offenses.

19 As part of doing that, I'd like to first bring you back to  
20 the autopsy for a moment. Exhibit 52, at Page 5, in the final  
21 paragraph of that page. There's Paragraph 7. If you could  
22 enlarge that at the bottom of the page.

23 Do you see there in the autopsy there's a reference to a  
24 laceration of the left superior, posterior scalp region?

25 A. Yes.

1 Q. With that in mind, I want to turn next to Exhibit 46,  
2 please.

3 Now, Exhibit 46 is in evidence as a November 28, 1994  
4 interview of Dr. John Howard. Do you see that?

5 A. Yes.

6 Q. Did you participate in that interview?

7 A. Yes, I did.

8 Q. And that interview took place, according to the date,  
9 November 28, '94, correct?

10 A. Yes.

11 Q. This would have been a few months after you had your  
12 telephone conversation with Dr. Keen, is that right?

13 A. Yes.

14 Q. I'd like to direct your attention to Page 19 of that  
15 interview.

16 If you could enlarge from Line 6 down to Line 14.

17 Do you see there Dr. Howard provided you with some  
18 information about the dating of the scalp injury? He's making  
19 reference to Item Number 7 in the autopsy report, which we just  
20 looked at, is that right?

21 A. Yes.

22 Q. He was asked a question: Are you able to say how old that  
23 particular injury is? Do you see what Dr. Howard's answer is  
24 at Line 14?

25 A. Yes, I do.



1 Q. Probably two days old. There is a gap there. Older than  
2 that. Correct?

3 A. Yes.

4 Q. Then if you could enlarge the remainder of Lines 15 through  
5 the end of the page there.

6 Now, the next question after he dated that injury as  
7 probably two days old, the next question was whether he based  
8 that opinion or finding on just a visual examination. Do you  
9 see that?

10 A. Yes.

11 Q. And Dr. Howard provided information to you that he actually  
12 iron stained and looked at that injury under a microscope to  
13 help determine the age, correct?

14 A. Yes.

15 Q. Now, the dating of that particular injury would at least,  
16 in terms of the probability of it as stated by Dr. Howard that  
17 it's probably two days, that would predate -- that would be --  
18 let me ask you, would that predate the afternoon of May 1st?

19 A. Yes, it would.

20 Q. Now I'd like you to next look at Page 22. If we could just  
21 enlarge the first top third or so of that page. Do you see  
22 that begins a discussion of the injury to Rachel's genitalia?

23 A. Yes.

24 Q. If we could just skip down to the next page. If we could  
25 enlarge just the first 10 lines or so. Here, again, Dr. Howard

1 was asked a question at Line 7.

2 We need to go to the next page. There we go. Great.

3 At Line 7, in regard to this particular injury, Dr. Howard  
4 was asked are you -- now, you're able to tell how old these  
5 injuries would be, and Dr. Howard indicated one or two days  
6 before death. Correct?

7 A. Yes.

8 Q. And certainly two days before death, if that injury  
9 occurred two days before death, that would not have occurred on  
10 May 1st in the afternoon, correct?

11 A. That's correct.

12 Q. And when Dr. Howard said one day, do you know if he was  
13 talking about a 24-hour -- 24 hours, or what he was talking  
14 about there?

15 A. It's not exactly clear.

16 Q. Then at Page 35 -- I'm sorry. My mistake. Can we just go  
17 back to Page 23 again? Sorry. And enlarge that same section.  
18 The first 10 lines of Page 23.

19 After he indicates a dating of the injury at Lines -- I  
20 guess that's Line 9, Dr. Howard describes cells. Do you see  
21 that?

22 A. Yes.

23 Q. Does that inform you that his dating of that injury was  
24 associated with some type of microscopic analysis if he's  
25 looking at, actually, cells?

1 A. Yes.

2 Q. Then if we could now go to Page 35. We're going to be  
3 looking at some questions he was asked about the timing of the  
4 abdominal injury. If we could enlarge Lines 14 through 20.

5 Do you see there now Dr. Howard is being asked about the  
6 timing of the -- at least when the child would be exhibiting  
7 symptoms of the abdominal injury, such as nausea and vomiting?  
8 Do you see that?

9 A. Yes.

10 Q. And Dr. Howard provided information to you that, preceding  
11 death, it could take up to a day just to develop signs of  
12 vomiting and nausea. Do you see that? That would be at Lines  
13 19 and 20.

14 A. Yes. Mmm-hmm.

15 Q. Yes?

16 A. Yes.

17 Q. So if it can take up to a day just to become symptomatic,  
18 would that tell you that the actual time to death would be even  
19 longer than a day? It would certainly occur after the symptoms  
20 of nausea, correct?

21 A. What he explained in this particular area was that it could  
22 develop over hours to a day.

23 Q. Right.

24 A. For the symptoms. So the time of death would have to be  
25 after that.

1 Q. Now, could you determine from your examination of the trial  
2 file if the defense team had any information regarding  
3 Dr. Howard's findings regarding the timing of the injuries  
4 before the interview of November 28, 1994?

5 A. Did the defense team have information about the timing of  
6 the injuries before this interview --

7 Q. Correct.

8 A. -- of Dr. Howard? I don't know.

9 Q. Did you, in your examination of the file, find any evidence  
10 that the defense team had any information regarding  
11 Dr. Howard's findings as to timing before the November 28  
12 interview?

13 A. Not that I am aware of.

14 Q. So were you provided information in the November 28th  
15 interview that Rachel's injuries might be dateable to April  
16 30th?

17 A. Yes.

18 Q. With that information at hand, did you find any record in  
19 the trial file that the defense team ever conducted any fact  
20 investigation focused on Rachel's activities on April 30 and  
21 who was with her on that day?

22 A. No.

23 Q. The day before May 1st?

24 A. No.

25 Q. Would there have been any reason not to investigate the

1 subject matter of Rachel's activities on April 30th and who was  
2 with her on that day?

3 A. No.

4 Q. I want to show you next an exhibit in evidence as 81. If  
5 we could just enlarge the first -- the entire top half of the  
6 exhibit.

7 Do you see this was an interview dated May 19 conducted by  
8 Detective Rankin, who is now Detective Pesquiera, of an Isobel  
9 Tafe?

10 A. Yes.

11 Q. Did you examine this document as part of your reexamination  
12 of the trial file?

13 A. I did.

14 Q. Did you see there that Ms. Tafe was told about an  
15 investigation of a homicide of a four-year-old girl? That's, I  
16 think, the third question down.

17 A. Yes.

18 Q. And that she'd already talked to a detective on May 2nd,  
19 correct?

20 A. Yes.

21 Q. Detective Rankin asked her: You know, did you know the  
22 little girl's name? And Ms. Tafe said: I don't know her name,  
23 but I knowed her when I seen the pictures. But I knowed the  
24 little girl had been over here.

25 Do you see that?

1 A. Yes.

2 Q. Then she goes on to, does she not, describe the fact that  
3 this four-year-old child was over at her house without adult  
4 supervision on the Saturday before her death?

5 A. I can only see the top line of that.

6 Q. We need to go down, sorry, to expand the bottom half of the  
7 page. My apologies. Do you see there --

8 A. I'm not sure about the adult supervision part. It says she  
9 was there Saturday.

10 Q. Some place in the trailer park where Mr. Jones lived? And  
11 she was without adult supervision. The Saturday before she  
12 died.

13 THE COURT: Is there a specific line you're trying to  
14 direct her attention to? That would save some time, if there  
15 is something specific you want to direct her attention to.

16 BY MR. SANDMAN:

17 Q. The second question there from the bottom: What day was  
18 this? This was the Saturday before the detective was here.

19 A. Yes, I see that she was there Saturday. I'm a little bit  
20 lost on the lack of adult supervision.

21 Q. And the question above that, she says that she was with her  
22 sister, Becca.

23 A. Yes.

24 Q. Who was not an adult.

25 A. Correct.

1 Q. Then on the next page, if you could enlarge just the top  
2 third.

3 Ms. Tafe was asked did you notice -- this is like the third  
4 question down: Did you notice any fading bruises on her? Do  
5 you see that Ms. Tafe indicated she had not, but that she  
6 noticed, like, Rachel might be sick. She wasn't natural, it  
7 was just a pale grayish color.

8 Do you see that?

9 A. Yes.

10 Q. Do you think that evidence might have been in sync with  
11 Dr. Howard's findings that Rachel's injuries could be dated  
12 more than a day prior to her death?

13 A. Yes.

14 Q. Did you do anything further to investigate that? Did you  
15 provide that information, for example, to your medical expert?

16 A. Not that I am aware of.

17 Q. Now, if we could turn to -- this is going to be a document  
18 within Exhibit 1, Page 1427.

19 MR. SANDMAN: Your Honor, Exhibit 1 is a large,  
20 probably almost 3,000 page exhibit, which is the trial file in  
21 its entirety. So I'm just -- we're going to look at Page 1427.

22 THE COURT: That's the Bates number of the page from  
23 Exhibit 1 that you're referring to?

24 MR. SANDMAN: Yes, sir.

25 THE COURT: Got it. Go ahead.

1 MR. SANDMAN: That should be the first page of  
2 Dr. Seifert's interview.

3 THE COURT: Is that the Bates number on the upper  
4 right-hand column, where it says --

5 MR. SANDMAN: I think we have to go --

6 THE COURT: 04205?

7 MR. SANDMAN: I think we'll have to go to 1426. There  
8 we go.

9 BY MR. SANDMAN:

10 Q. Do you recognize the page we're looking at there?

11 THE COURT: Can I stop you for one minute? I want to  
12 make sure that we are clear on the numbers that are being used.  
13 So at the top of the document I see the 1426. It looks like  
14 it's Exhibit 1426. But then there's a Bates number on the  
15 right-hand column on the page; that has nothing to do with the  
16 numbers system we're talking about now, correct?

17 MR. SANDMAN: It does have nothing to do with it, yes.

18 MS. SMITH: Your Honor, if I could interrupt. There's  
19 also a Bates number on the bottom left of the page that does  
20 correspond to what we are talking about.

21 THE COURT: 1426. It's on the bottom left-hand side  
22 of the page, just so we're clear. Go ahead.

23 BY MR. SANDMAN:

24 Q. This document references the January 20, 1995 interview of  
25 Dr. Seifert?



1 A. Yes.

2 Q. And you participated in that interview?

3 A. Yes, I did.

4 Q. And do you remember that Dr. Seifert was the emergency room  
5 doctor that declared Rachel's death at Kino Hospital?

6 A. Yes.

7 Q. If we could look at Page 1434, Bates page 1434, in that  
8 document. That middle paragraph that's partially highlighted,  
9 if you could expand that.

10 If you could take a look at that paragraph there. There,  
11 Dr. Seifert was estimating the time of Rachel's death, do you  
12 see that?

13 A. Yes.

14 Q. And he estimated that she had been deceased somewhere  
15 between two and three hours before he saw her.

16 A. Yes.

17 Q. And remember earlier when we looked at the Kino Hospital  
18 record, he had seen her -- she was admitted at around 6:16 in  
19 the morning that Monday morning, correct?

20 A. Yes.

21 Q. So he's estimating that she would have been deceased around  
22 3:00 to 4:00 a.m. that Monday morning, correct?

23 A. Yes.

24 Q. If we were to date that back, for example, 12 hours, that  
25 would take us to around 3:00 or 4:00, 3 :00 to 4:00, Sunday

1 afternoon, correct?

2 A. Yes.

3 Q. Now, can you think of any reason at this juncture, after  
4 interviewing Dr. Seifert and Dr. Howard, for not investigating  
5 further the medical question whether Rachel's injuries could be  
6 reliably dated to sometime to the afternoon of May 1st?

7 A. No, no reason.

8 Q. I want to ask you to look at Exhibit 35 next.

9 If we could just blow up the title of that article there,  
10 the first page.

11 This Exhibit 35 is in evidence. It was retrieved from the  
12 trial counsel file entitled Child Abuse: Medical Diagnosis and  
13 Management.

14 Do you see that?

15 A. Yes.

16 Q. Have you, as part of your review of the trial file, have  
17 you looked at this article?

18 A. Yes, I have.

19 Q. Again, if we could look at Page 7. The second full  
20 paragraph down on the left column, if we could blow that up.

21 Is that Page 7? I think we may need the paragraph above.  
22 My apologies. Hold on a second.

23 I'm sorry. That's the correct paragraph we want to look  
24 at, but the second --

25 THE COURT: The second paragraph?

1 MR. SANDMAN: Yes.

2 THE COURT: There's two there.

3 MR. SANDMAN: I'm sorry?

4 THE COURT: I just want to make sure which paragraph  
5 you're referring to.

6 BY MR. SANDMAN:

7 Q. The second paragraph states that because knowledge of the  
8 time at which the injury occurred may be forensically useful,  
9 surgeons treating children with peritonitis from unexplained  
10 intestinal perforations should collect small mesenteric biopsy  
11 samples to allow the pathologists to determine the stage of the  
12 disease process?

13 Do you see that?

14 A. Yes.

15 Q. I think that you testified earlier that when Mr. Bruner was  
16 in Court on July 14, '94, he mentioned his desire at least at  
17 that time to have tissue samples examined.

18 A. Yes.

19 Q. I think you've testified this afternoon that when you  
20 interviewed Dr. Howard and he was dating the injuries that he  
21 was also referring to his microscopic examination of the  
22 tissues, correct?

23 A. Yes, that's correct.

24 Q. Now, given the injury dating information in your file,  
25 reference this article and what you learned from Dr. Howard

1 about the method for dating injuries associated with  
2 microscopic examination, did you understand or did you have  
3 enough information to put you on notice that if you were to --  
4 if the defense were to conduct its own independent medical  
5 investigation of the time of injuries, it would need to have an  
6 expert review the tissue slides from Rachel's autopsy?

7 A. Yes.

8 Q. Do you know whether that was ever done?

9 A. I don't think it was.

10 Q. If Dr. Keen were to testify in these proceedings that he  
11 needed to examine the tissue slides to reliably date the  
12 injuries, would that appear to be consistent with the process  
13 Dr. Howard described in his own interview as described to you  
14 on November 28th, 1994?

15 A. Yes.

16 Q. So after Dr. Howard -- or after his interview, can you  
17 think of any reason the defense didn't ask its medical expert  
18 to be sure to review the tissue samples from Rachel's autopsy?

19 A. I can't think of any reason.

20 Q. Just a general question: What was the strategy of the  
21 defense team in Mr. Jones' case?

22 A. I think the strategy was just that Mr. Jones didn't commit  
23 these acts, that he didn't injure, injure the child, just to  
24 challenge the state's evidence.

25 Q. And I think you have already testified this afternoon, when

1 you looked at Mr. Bruner's cross-examination of Dr. Howard,  
2 that essentially there was no challenge made to the state's  
3 medical evidence tying Mr. Jones to criminal activity on the  
4 afternoon of May 1st, correct?

5 A. Correct.

6 Q. Dr. Howard's testimony that the injuries were consistent  
7 with Sunday afternoon was not challenged, is that right?

8 A. That's right.

9 Q. Now, in a case where the state was seeking to prove that  
10 the injuries were inflicted on a certain date and time, would  
11 it have been plausible to attempt to challenge the state's time  
12 of injury evidence with defense medical evidence demonstrating  
13 that the injuries were not inflicted on Sunday, May 1st?

14 A. Yes.

15 Q. I want to, in that regard, show you Exhibit 106, which is  
16 in evidence. It's a report submitted by Janice J. Ophoven,  
17 dated February 1, 2010.

18 I would like you to look at the first -- at least the  
19 second page of that exhibit. There is sort of the first -- the  
20 middle paragraph that has some bold print in it. I'm going to  
21 read to you what Dr. Ophoven said here, in that first paragraph  
22 that's been enlarged:

23 Many opinions were provided to the court and the jury, but  
24 it is my opinion that the key findings in this case of  
25 abdominal trauma of many days' duration were not made clear.

1 The evidence shows that the fatal injuries to Rachel Gray could  
2 not possibly have been inflicted on the day prior to her death  
3 as suggested by the state at Mr. Jones' trial. The veracity of  
4 this evidence is as scientifically precise as any forensic  
5 determination available in medical science.

6 Do you see that?

7 A. Yes, I do.

8 Q. So, my question, would the presentation of this type of  
9 evidence, the evidence that I just read to you from  
10 Dr. Ophoven, would that evidence have been consistent with the  
11 strategy to challenge the state's evidence?

12 A. Yes, it would.

13 Q. So if you're challenging the state's evidence, you're not  
14 absolutely constrained to just coming into the trial and  
15 attempting to cross-examination or whittle away at the state's  
16 case. Consistent with the strategy to challenge evidence, you  
17 can present your own defense evidence, correct?

18 A. Yes, of course.

19 Q. Now I want to head up to the first page of this exhibit,  
20 106, in the first paragraph of that report.

21 In this paragraph, Dr. Ophoven indicates that she requested  
22 special stains for the anogenital tissues, do you see that?

23 A. Yes.

24 Q. From Rachel's autopsy?

25 MR. BRACCIO: Judge, I am going to object to this line

1 of questioning on relevance.

2 MR. SANDMAN: Well, the next question is going to be:  
3 Would you have presented this evidence consistent with your  
4 strategy? And I think that is relevant because the state is  
5 arguing that this strategy was confined to just cross-examining  
6 witnesses, and the witness is now saying that the strategy to  
7 challenge evidence includes presenting your own evidence.

8 We've already been through this when we went through  
9 Page 2. The question is: Would you have presented this  
10 consistent with your strategy? That's what this whole case is  
11 about.

12 THE COURT: I'll allow the question. Overruled.

13 Go ahead.

14 BY MR. SANDMAN:

15 Q. In any event, Dr. Ophoven says, and I'll read this --

16 THE COURT: I'm sorry. You had a question to her and  
17 now I think you're moving on. So why don't you have her answer  
18 the question that you posed to her? The question was about the  
19 slides, right?

20 MR. SANDMAN: I don't remember now.

21 THE COURT: Hold on.

22 MR. SANDMAN: I think my last --

23 THE COURT: So: Would the presentation of this type  
24 of evidence, the evidence that I just read to you from  
25 Dr. Ophoven's, would that type -- would that evidence have been

1 consistent with the strategy to challenge the state's evidence?

2 That's the question.

3 MR. SANDMAN: That was the question I asked with  
4 respect to Dr. Ophoven's comments on Page 2 of her report. Now  
5 we're on Page 1 of the report.

6 THE COURT: Go ahead and formulate your next question.

7 MR. SANDMAN: I'm sorry.

8 BY MR. SANDMAN:

9 Q. When we were looking at Page 2 of the report, we were  
10 looking at Dr. Ophoven's opinion as to the dating of the  
11 abdominal injury, correct?

12 A. Yes.

13 Q. Now I want to ask you a question about her opinion on the  
14 dating of the vaginal injury. Do you understand that?

15 A. Yes.

16 Q. Different injury. I just want to read to you what  
17 Dr. Ophoven said with respect to that injury, the vaginal  
18 injury. She said that the trichrome stain shows clear evidence  
19 of vital reaction with deposits of collagen containing tissue  
20 and neovascularization in the wall of the vagina. This  
21 indicates substantial healing and is not consistent with a  
22 fresh penetrating injury. The age of the injury cannot be  
23 precisely determined, but the injury did not occur in the few  
24 days prior to her death.

25 Do you see that?



1 A. Yes.

2 Q. So she's talking here about the vaginal injury being older  
3 than a few days prior to Rachel's death, correct?

4 A. Yes, correct.

5 Q. Is this the type of -- would you have presented this  
6 evidence consistent with your strategy to challenge the state's  
7 evidence?

8 A. Yes.

9 Q. If you had forensic evidence that the vaginal injury showed  
10 signs that it was weeks old and possibly predated Rachel's  
11 residency with Mr. Jones, would you have presented that  
12 evidence?

13 A. We certainly would.

14 Q. And during the course of representing Mr. Jones, did you  
15 acquire any evidence that suggested Rachel maybe had been  
16 exposed to sexual abuse prior to her residency with Mr. Jones?

17 A. We did.

18 Q. I'd like to show you Exhibit 30. Do you recognize Exhibit  
19 30 as your handwritten notes?

20 A. Yes.

21 Q. I'd like if we could enlarge the bottom third of that page.  
22 This is your handwriting?

23 A. It is.

24 Q. Do you see where it says: Zoly problems with Johnny and  
25 Rachel sexually in the past?

1 A. Yes.

2 Q. Who is Johnny?

3 A. Johnny was Rachel's older brother.

4 Q. Who was Zoly?

5 A. Zoly was Angela's prior boyfriend.

6 Q. Could we see the next page of Exhibit 30? If we can  
7 enlarge sort of the middle section of that page.

8 Is this also your handwriting on this page?

9 A. Yes.

10 Q. A has 14-year-old Johnny deaf/mute molesting kids.

11 Did you write that?

12 A. I did.

13 Q. I want to have you look at another exhibit that discusses  
14 this topic. It's in Exhibit 1, I believe beginning at Page  
15 890. I want to make sure we go to the first page of Brandie's  
16 interview.

17 This is the videotape deposition of Brandie Elisha Jones  
18 dated March 6, 1995, is that correct?

19 A. Yes.

20 Q. Who was Brandie?

21 A. Brandie is Mr. Jones' daughter.

22 Q. It looks like the first page of this document begins at  
23 Bates Page 813. I'd like to turn your attention to Bates Page  
24 892. If you could enlarge the question starting at Line 12  
25 through 21.

1 Brandie was asked: Did you ever see Johnny do anything to  
2 Rachel? And she says: No, but Johnny -- Rachel always --  
3 every time Johnny would, like, come in the room or something,  
4 she (phonetic) would say, "Can I sleep with you, Brandie?"  
5 "Can I sleep with you, Brandie?" And one day we were -- and  
6 Johnny -- when Johnny shared a room with us girls, Rachel  
7 always was like scared, and she was always sleeping by the wall  
8 next to me and stuff.

9 Do you see that?

10 A. Yes.

11 Q. Then at Page 893, which I believe is the next page, if you  
12 could enlarge Line 6 through 17. This is a further explanation  
13 by Brandie of Rachel being concerned about Johnny in the  
14 bedroom wanting to sleep next to Brandie, is that right?

15 A. Yes.

16 Q. Then if you could enlarge Lines 18 through 25, the last  
17 three lines. It reports that Brandie would let Rachel up in  
18 her top bunk, and when Johnny would leave she'd go shut the  
19 door and get back in her bed. Is that correct?

20 A. Yes.

21 Q. Finally, the next page. If you could enlarge the first 12  
22 lines -- 13 lines.

23 Brandie was asked whether Johnny ever tried to do anything  
24 to Brandie, do you see that?

25 A. Yes.

1 Q. And she says: He tried one time and I went and told Angela  
2 and that's when he got his built-on room in the kitchen.

3 Correct?

4 A. Yes.

5 Q. So he was basically taken out of the bedroom, and they  
6 tried to find someplace else for Johnny to sleep, is that  
7 right?

8 A. Yes, it is.

9 Q. Actually, if you enlarge Lines 14 down.

10 Brandie was asked: Was he sleeping in the same bedroom  
11 with you girls? And Brandie says: Yeah, he was sleeping on  
12 the floor and we on the beds.

13 Turning to the next page. If you could enlarge the  
14 first -- like Lines 3 through 13. Here, Brandie was asked:  
15 Can you remember that Johnny -- the best you can remember that  
16 Johnny just tried to do something -- I'm sorry. The question  
17 is a little disjointed here on the page. It's Line 3.

18 And so the best of your -- the best that you can remember  
19 that Johnny just tried to -- to do something one time, what was  
20 it that he tried to do? And Brandie said basically that he  
21 tried to touch her front. That's what she says at Lines 8  
22 through 13. Correct?

23 A. Yes.

24 Q. With the information that you had in your own notes about  
25 the possibility of sexual issues between Rachel and Johnny, and

1 the interview you had with Brandie, could you determine from  
2 the review of your file whether you did any follow-up  
3 investigation with respect to that topic?

4 A. I don't think we did.

5 Q. Could you think of any reason not to further that  
6 particular investigation?

7 A. No.

8 Q. Just some general questions about your strategy to  
9 challenge the state's evidence.

10 Do you remember that the state presented bloodstain  
11 interpretation evidence of Mr. Jones' trial?

12 A. Can you say that again?

13 Q. Do you remember that the state presented bloodstain  
14 interpretation evidence showing that the blood in Mr. Jones'  
15 van and on his clothing was additional proof that he had  
16 assaulted Rachel in the van?

17 A. Yes.

18 Q. Would it have been consistent with the defense team trial  
19 strategy to challenge the state's evidence to present your own  
20 bloodstain interpretation evidence from a qualified expert?

21 A. Yes, it would have.

22 Q. I guess I'd have the same question to the other key aspects  
23 of the state's evidence. Do you remember that there was  
24 eyewitness evidence from two twins that they had seen Mr. Jones  
25 assaulting Rachel in the parking lot of the Choice Market on

1 the afternoon of May 1st?

2 A. I do remember that.

3 Q. And would it have been contrary to the defense strategy to  
4 present your own expert testimony challenging that eyewitness  
5 testimony?

6 A. No, it would not have been contrary.

7 Q. I think you testified earlier this morning that you had  
8 actually attended the Angela Gray trial, is that right?

9 A. Yes.

10 Q. I want to show you Exhibit 27. Exhibit 27 is in evidence  
11 and it is -- if you could just enlarge the caption there so  
12 I'll see the caption. This was a motion filed on behalf of  
13 Mr. Jones for an order to produce the trial transcripts of  
14 Dr. John Howard and Rebecca, Becky, Lux.

15 If we can enlarge Lines 11 through 23.

16 Now, you attended the Gray trial and you submitted this  
17 motion, it's under your signature, correct?

18 A. Yes.

19 Q. You asked that the Court provide transcripts for Rachel's  
20 sister Becky's testimony at the Gray trial, as well as  
21 Dr. Howard's testimony at the Gray trial, correct?

22 A. Yes.

23 Q. And you indicate that these testimonies form a crucial part  
24 of the defendant's case and there's a substantial need to have  
25 them produced, do you see that?

1 A. Yes.

2 Q. With that request in mind, I want to turn next to what  
3 Dr. Howard testified to at the Gray trial. So we'll need to  
4 look at Exhibit 48A.

5 48A is the trial transcript in the case of State of Arizona  
6 vs. Angela Gray, dated March 28, 1995. If we could key in on  
7 at least the first page of Dr. Howard's testimony in that case.

8 Okay. So we're at Page 39 of that particular transcript.  
9 Or we were.

10 MR. SANDMAN: The first page he testified. I thought  
11 you had just pulled that up.

12 BY MR. SANDMAN:

13 Q. Page 39 of the transcript. Dr. Howard is called to  
14 testify, and I want to turn your attention to Pages 99 through  
15 101 of that transcript, starting with Page 99.

16 Have you -- as part of your review of the record in the  
17 case, did you review Dr. Howard's -- this portion of  
18 Dr. Howard's testimony at Ms. Gray's trial?

19 MR. SANDMAN: We need to get to Page 99 through 101.

20 BY MR. SANDMAN:

21 Q. This was Mr. Darby's cross-examination. Did you read it  
22 previously?

23 A. Yes.

24 Q. Page 99 is the beginning of Mr. Darby's cross-examination.  
25 Let's go to the next page, Page 100.

1 Do you see at Page 99 that Mr. Darby was asking about --  
2 questioning Dr. Howard about the dating of the vaginal injury  
3 that Rachel had? The page before? Do you want to look at the  
4 page before again if you didn't see it?

5 THE COURT: Are you asking her to look at 99 --

6 MR. SANDMAN: Page 99.

7 A. Yes.

8 BY MR. SANDMAN:

9 Q. So, at Page 99, he begins questioning about the dating of  
10 the vaginal injury. And then at Page 100, at Lines 10 and 11,  
11 if you could just enlarge that, he says that the dating of that  
12 injury is more typical of around 24 hours. Do you see that?

13 A. Yes.

14 Q. If we can enlarge Lines 3 through 8. He puts the minimal  
15 time from injury to death as perhaps as few as 12 hours and up  
16 to 48 hours. Correct?

17 A. Yes.

18 Q. So, just to break this down, the 24 hours, if Rachel died,  
19 as Dr. Seifert advised you, between 3:00 and 4:00 in the  
20 morning on May 2nd, the typical time between injury and death,  
21 24 hours, that would be before Sunday afternoon, correct, of  
22 May 1st?

23 A. Yes.

24 Q. Certainly, 48 hours would be well outside the window of the  
25 afternoon of May 1st.



1 A. It would.

2 Q. And if we go with the minimum, 12 hours before death, we're  
3 looking at an injury being inflicted between around 3:00 and  
4 4:00 in the afternoon, correct?

5 A. Yes.

6 Q. Now, at Page 101, if you could enlarge Lines 3 through 7.  
7 We are talking about the internal injuries, which would be the  
8 small bowel injury Rachel suffered from, and he's asked for  
9 clarification about the timing of that injury at about 24 hours  
10 prior to death. And Dr. Howard says that the findings, his  
11 findings regarding the timing of the abdominal injury, would be  
12 most consistent with 24 hours. Correct?

13 A. Yes.

14 Q. And that is also outside the window of Sunday afternoon.  
15 Is that correct?

16 A. It is.

17 Q. In connection with this injury, if we could enlarge Lines  
18 10 through 17. Dr. Howard is telling Ms. Gray's jury that,  
19 again, the fewest number of hours between injury and death is  
20 around 12 hours, and it could go up to, he says, 36 hours.  
21 Correct?

22 A. Yes.

23 Q. So, somehow, if we were to follow the logic of Dr. Howard's  
24 testimony in front of Ms. Gray's jury, these injuries would had  
25 to have been inflicted -- even the minimum, 12 hour, would have

1 to have been inflicted between 3:00 and 4:00 in the afternoon  
2 on Sunday, correct?

3 A. Yes.

4 Q. Did you have information that Rachel appeared as though she  
5 had not been assaulted that afternoon, as late as 3:00 or 4:00  
6 in the afternoon?

7 A. Yes.

8 Q. Did you have that in your file?

9 A. We did have that.

10 Q. Do you remember -- we could look -- we looked earlier. One  
11 of the first things we did this morning is we looked at George  
12 Barnett's report. He reported to you that Mr. Jones' neighbor,  
13 Shirley DeVous, said that she had seen Rachel out sitting on a  
14 bicycle between 3:00 and 4:00 in the afternoon on Sunday, May  
15 1st, correct?

16 A. Yes.

17 Q. Let me have you look at another source of evidence as to  
18 Becky's -- excuse me -- Rachel's appearance at the time -- at  
19 the day -- on Sunday by having you look at Exhibit 41A.

20 Exhibit 41A is a transcript dated March 24, 1995, in the  
21 case of State of Arizona vs. Angela Renee Gray. I want to ask  
22 you some questions about Rachel's sister Becky's testimony at  
23 the Gray trial. By the way, this is one of the transcripts --  
24 along with Dr. Howard's from the Gray trial -- that you asked  
25 to be prepared because it was crucial to the defense, correct?

1 A. Yes.

2 Q. So if we look at Page 4, that's the beginning of Becky's  
3 testimony, and I want to skip ahead to Page 61.

4 At Page 61, this also corresponds to Mr. Darby's --  
5 Ms. Gray's attorney's questioning of Becky.

6 I'd like you to -- if you could enlarge starting at around  
7 Line 18 through 25. And so Becky tells Ms. Gray's jury that  
8 this --

9 MR. SANDMAN: Is this Page 68? I'm sorry. Did I give  
10 you the wrong page number?

11 THE COURT: Sixty-one is what you said.

12 MR. SANDMAN: I'm sorry. Too many pages and too many  
13 transcripts.

14 THE COURT: I thought you said 68 after that.

15 MR. SANDMAN: I did.

16 THE COURT: So it is 68?

17 MR. SANDMAN: Yes.

18 BY MR. SANDMAN:

19 Q. Then if you could enlarge Lines 18 through 22.

20 Mr. Darby is asking Becky: Now, when you left at 5:00,  
21 about 5:00 or 5:15, Rachel was standing in the living room?  
22 And she answers yes. Mr. Darby said: She was just acting like  
23 a normal kid when you left? And she says yes.

24 If we could go to the next page, the questioning continues.  
25 If you could enlarge the first 12, 13 lines there.

1 Mr. Darby goes on to ask her if at 5:00, 5:15, on Sunday  
2 afternoon, Rachel looked sick or hurt, correct?

3 A. Yes.

4 Q. And Becky said no.

5 And then Mr. Darby begins questioning her about some trips  
6 that Rachel had in the van with Mr. Jones earlier that day,  
7 correct?

8 A. Yes.

9 Q. And he has her confirm that Mr. Jones got up that day about  
10 2:30 in the afternoon, correct?

11 A. Yes.

12 Q. And that they went somewhere in the van and came back.

13 Can we expand Lines 15 through 25.

14 They came back from that trip and she got out of the van.

15 Let's go to the next page to see what happened after the  
16 first trip. If we could enlarge the first half page there.

17 So they come back from the first trip, and Becky tells the  
18 jury that Rachel didn't look hurt after that first trip in the  
19 van, and that later they left on a second trip, at around 4:00  
20 o'clock. Do you see that?

21 A. Yes.

22 Q. If we can enlarge the bottom half of that page, starting at  
23 Line 13 to the bottom. She was asked: Did you see them come  
24 back again? That's at Line 21. And she says yes.

25 Let's go to the next page. Then if you could enlarge the

1 first 12 lines. She was asked: Did Rachel appear to be okay  
2 at that time? Now, that's after the second trip. And she says  
3 yes. Correct?

4 A. Yes, she did.

5 Q. And actually she's asked a very specific question at Line 5  
6 and 6 by Mr. Darby. He says: Are you sure they left, they  
7 went and they came back two separate times? Do you see that?

8 A. Yes.

9 Q. And she answered yes.

10 Now, given your own conclusion, what you expressed in your  
11 motion to get these transcripts from Dr. Howard and Dr. --  
12 excuse me -- Becky, which you described as being crucial to  
13 Mr. Jones' defense, can you think of any reason why neither  
14 Dr. Howard or Becky were impeached with this testimony at  
15 Mr. Jones' trial?

16 A. No, no reason.

17 Q. Do you remember that at Mr. Jones' trial Becky said there  
18 were actually three trips in the van?

19 A. She did.

20 Q. Did she not?

21 A. Yes.

22 Q. Then the prosecutor argued that the injuries occurred on  
23 the third trip.

24 A. Correct.

25 Q. And the jury was never told that Becky had testified under

1 oath a couple of weeks earlier that there were just two trips  
2 and Rachel was fine after two trips. Correct?

3 A. Correct.

4 Q. Now, given Dr. Howard's testimony at the Gray trial, where  
5 he said the injury was most consistent with occurring prior  
6 to -- essentially prior to the afternoon of May 1st, and the  
7 vaginal injury was also -- because it's typical of 24 hours  
8 also would be prior to the afternoon of May 1st, on top of  
9 which he testified that the minimum hours would be 12, which  
10 dovetails with the time she appears not to have been beaten  
11 that afternoon, in light of all that information, can you think  
12 of any reason why you would not have further consulted with  
13 your defense medical expert in pursuit of an independent  
14 examination of the timing of Rachel's injuries and whether they  
15 occurred when Rachel was alone with Mr. Jones on May 1?

16 A. No, no reason.

17 Q. Do you remember that Becky had also, before she testified  
18 at the Gray trial, had given pretrial statements to the police  
19 and to defense counsel?

20 A. Yes.

21 Q. And did she happen also on those occasions to describe only  
22 two trips in the van with Mr. Jones that day? That Rachel had  
23 only two trips?

24 A. I think that's true, but I am not sure if I remember that  
25 specifically.

1 Q. I'm going to shift topics with you at this point and ask  
2 you, can you tell us whether either you or Mr. Bruner conducted  
3 any independent investigation with respect to the bloodstain  
4 evidence and how those stains should be interpreted?

5 A. I don't think we did.

6 Q. Would you have needed help from an expert to interpret  
7 those bloodstains?

8 A. Yes.

9 Q. Can you think of any reason why an expert was not  
10 consulted?

11 A. No.

12 Q. With respect to bloodstain interpretation?

13 A. No.

14 Q. I'd like you to take a look at Exhibit 17.

15 MR. SANDMAN: Your Honor, Exhibit 17 is a fax cover  
16 sheet dated April -- can you read the date at the bottom there?  
17 Can we blow it up maybe?

18 THE COURT: '95?

19 MR. SANDMAN: It's April '95.

20 THE WITNESS: April 8th.

21 THE COURT: It looks like it's April 4. That sort of  
22 distorted it.

23 THE WITNESS: I think it's April 8th.

24 MR. SANDMAN: April 8th. Okay.

25 BY MR. SANDMAN:

1 Q. Do you recall Mr. Jones' jury selection began on April 5th?

2 A. I don't.

3 Q. If the record shows that --

4 A. That's what happened. I don't remember.

5 Q. Assuming that's the date, so this would have come in after  
6 the start of the trial, correct, April 8th?

7 A. Yes.

8 Q. And Mr. Barnett, on the cover sheet, says: Will send bill  
9 later, possibly just pro bono. Correct?

10 A. Yes.

11 Q. Let's look at the next page. This is his report dated  
12 March 31, '95. If you could.

13 Did you have an opportunity to review this report recently?

14 A. I did.

15 Q. Could you tell us what this report was.

16 A. This was the report where -- where Mr. Barnett went to the  
17 impound yard to view the van, Mr. Jones' van, and take some  
18 measurements and photos, things like that.

19 Q. And anticipa- -- tell me the reason why you had Mr. Barnett  
20 do this.

21 A. We had him do that because we didn't think that the Lopez  
22 children could have seen what they said they saw. It was a big  
23 van and Rachel was a small child, and the Lopez children were  
24 children, they were small, and we just didn't think they'd be  
25 able to see what they said they did.



1 Q. So you received this information in the midst of the trial  
2 on April 8th, and does the --

3 Let's go on to the next page of the report.

4 Does the report consist of anything more than measurements  
5 and references to certain photographs Mr. Barnett took?

6 A. No.

7 Q. And does the report say anything about whether the children  
8 could -- does this express any findings or opinions about  
9 whether the children could see -- the children, the Lopez  
10 children, whether they could see inside the van to see Rachel  
11 being struck by Mr. Jones?

12 A. No.

13 Q. Could we see Exhibit 26?

14 Exhibit 26 is a Defendant's Rule 15.2 disclosure. If we  
15 could take a look at the bottom half of that page. This was  
16 something filed on -- I think the date there said March 31,  
17 1995.

18 You listed Mr. Barnett as a possible witness to testify as  
19 to measurements, correct?

20 A. Yes.

21 Q. And indicated that you might use photographs and notes  
22 taken by Mr. Barnett regarding the van, correct?

23 A. Yes. You know, something else just occurred to me. I  
24 think we also asked him to take the measurements because the  
25 van was so wide, and we weren't sure if the -- if the actions

1 that those children said they saw were even physically  
2 possible. In other words, whether Mr. Jones -- thinking about  
3 Mr. Jones' reach and how far the seats were apart and that sort  
4 of thing.

5 Q. In your notice of disclosure, did you disclose that  
6 Mr. Barnett would be expressing any opinions of an expert  
7 nature regarding whether either the children could see in the  
8 van, consistent with what they said they saw, or that he would  
9 be testifying or offering expert opinions on whether Mr. Jones  
10 could reach Rachel into the seat in the van?

11 A. No.

12 Q. Do you think based on your own suspicions that Mr. Jones  
13 could neither reach Rachel, and that the children could not  
14 have seen what they said they saw, in light of that, can you  
15 think of any reasons why you wouldn't have consulted with an  
16 expert who could have helped you answer the questions that you  
17 posed?

18 A. No, no reason.

19 MR. SANDMAN: Your Honor, that's all I have.

20 THE COURT: All right. Thank you. Cross-examination?

21 MR. BRACCIO: Your Honor, may I approach the witness?

22 THE COURT: You may. Just make sure opposing counsel  
23 knows what you're going to be providing the witness.

24 MR. BRACCIO: The timeline change. I have a copy for  
25 Your Honor as well.

1 MR. SANDMAN: Your Honor, we were handed this 35-page  
2 timeline this morning, this is what it purports to be, and we  
3 have not had a chance to review or study it. So I  
4 understand --

5 THE COURT: What are you asking me for?

6 MR. SANDMAN: I'm sorry?

7 THE COURT: Is there an objection? Are you asking  
8 for --

9 MR. SANDMAN: We'll do the best -- no. We'll do the  
10 best we can in trying to determine whether we have any  
11 objections as we go along.

12 THE COURT: Well, it's noted. If you have an  
13 objection as we go forward, you can make your objection.

14 And this is not marked because this is for demonstrative  
15 purposes?

16 MR. BRACCIO: That's correct, Your Honor.

17 THE COURT: Fine.

18 MR. BRACCIO: For the record, I had e-mailed  
19 Mr. Sandman about the disclosure of demonstrative exhibits a  
20 week ago, if he requested that, we received no word on that.  
21 As I indicated Friday at the status conference as well, we were  
22 putting this together and I'd get it to him as soon as  
23 possible. It's a demonstrative exhibit, I don't intend to  
24 introduce it.

25 THE COURT: Fair enough. Go ahead.

1 CROSS-EXAMINATION

2 BY MR. BRACCIO:

3 Q. Good afternoon, Judge Bowman.

4 A. Good afternoon.

5 Q. We heard from Mr. Bruner that you actually clerked with his  
6 firm for about a year before you two left, is that correct?

7 A. I don't remember. I know I did some work for the firm. I  
8 don't remember how much it was or how long -- for how long.

9 Q. And then you were trying criminal cases at that time?

10 A. With Mr. Bruner?

11 Q. With Mr. Bruner, correct?

12 A. Yes.

13 Q. You had previously tried a capital case, shared a capital  
14 case?

15 A. Yes.

16 Q. How would you describe your work ethic back in 1994?

17 A. Wow. That's a hard question. I hope my ethics were  
18 similar to what they are now. I didn't have, of course, nearly  
19 as much experience, but I know I took my work very seriously.

20 Q. You were organized?

21 A. I think so.

22 Q. Prepared?

23 A. Yes.

24 Q. You have very little to no memory of this case, is that  
25 right?

1 A. That's correct.

2 Q. Let's see if we can refresh your recollection with the  
3 record in this case. When you initially began your  
4 representation of Mr. Jones, you read all the police reports,  
5 police witness interviews, and the disclosures in this case as  
6 they came in, correct?

7 A. Yes.

8 Q. As well as you interviewed nearly all the state's  
9 witnesses, correct?

10 A. Yes.

11 Q. I counted 18 witnesses that you either interviewed or  
12 deposed.

13 I'd like to go first --

14 THE COURT: Was there an answer to that?

15 BY MR. BRACCIO:

16 Q. Yeah.

17 A. I don't specifically recall that, but just from the review  
18 of the record, I think that's probably about true.

19 Q. About 18 witnesses?

20 A. Something like that.

21 THE COURT: Thank you.

22 BY MR. BRACCIO:

23 Q. I'd like to go through the facts that you knew going into  
24 this case and see if that helps refresh your recollection.

25 Can we pull up 4443?

1 MR. BRACCIO: Your Honor, for reference, I am going to  
2 be referencing by the Bates number, which is at the bottom  
3 left. I believe these are almost nearly all contained in  
4 Exhibit 1.

5 THE COURT: Fine. Thank you. To the extent they're  
6 not in Exhibit 1, if you would please indicate that for the  
7 record.

8 MR. BRACCIO: Absolutely. Absolutely.

9 THE COURT: Thank you.

10 MR. BRACCIO: Trial Exhibit 65.

11 Is it not pulling up? I guess can we get -- I guess if  
12 there's any IT help?

13 MS. SCHNEIDER: I have it on my screen, the problem  
14 appears with this wire that they installed.

15 THE CLERK: Okay.

16 MR. BRACCIO: We can move on in the meantime.

17 THE COURT: Hold on. Give me a second.

18 (Pause in proceedings)

19 THE COURT: We're going to take a brief break. We're  
20 going to try to get IT here to make sure this is working.  
21 We'll try to give it five or ten minutes.

22 (A recess was taken from 2:36 p.m. to 2:57 p.m.)

23 THE COURT: All right. Did we get it fixed?

24 MR. BRACCIO: Yes. Thank you, Your Honor. My  
25 apologies.

1 THE COURT: Go ahead.

2 BY MR. BRACCIO:

3 Q. Judge Bowman, the picture on the screen, this is trial  
4 Exhibit 65. Do you recognize this as Rachel Gray?

5 A. I do from my review. I wouldn't have remembered.

6 Q. Do you recall that Rachel Gray had virtually no  
7 documentation of any prior medical history?

8 A. I don't remember that.

9 Q. Do you recall that Angela Gray told detectives that she  
10 never took Rachel to a regular doctor, just took her to the  
11 university hospital if there was ever a problem?

12 A. I don't recall that.

13 Q. So at the top paragraph there, I'll give you a moment to  
14 read that.

15 A. Yes.

16 Q. For purposes of this questioning, too, I'll presume that  
17 you don't remember these things, we'll just bring up the  
18 document to refresh your recollection.

19 A. All right. Thank you, very much.

20 Q. Of course. This is Exhibit 67, Bates Number 5573.

21 THE COURT: Thank you. You anticipated something I  
22 was just about to ask you.

23 A. Yes, I've read the top paragraph.

24 BY MR. BRACCIO:

25 Q. Angela Gray told detectives that she never took Rachel Gray

1 to a regular doctor, only to the university hospital when there  
2 was a regular medical emergency.

3 A. I don't exactly -- sorry. This is moving around quite a  
4 bit.

5 THE COURT: Maybe we can just keep one up at a time.

6 MR. BRACCIO: Scroll down, Daniel. Keep going.

7 A. It sounds like what she was saying is that the doctors that  
8 she saw were at -- were at the university, at UMC, and that  
9 they saw a different doctor each time.

10 BY MR. BRACCIO:

11 Q. Okay. Let's go to Exhibit 66, 5180.

12 A. She says she can't remember when the last time was that she  
13 took her to a doctor, it had been a while. But she goes to the  
14 university, the hospital, the pediatric department, her doctor  
15 changes every time.

16 Q. And Angela told detectives that Rachel was tiny and  
17 slightly anemic, do you recall that?

18 A. Is that in front of me?

19 Q. Exhibit 66, Bates number 5186, at the top of that page.

20 MR. BRACCIO: I apologize, Your Honor, this is a  
21 little clunky. A lot of these don't have page numbers on them.  
22 We should pick up the pace with some of them.

23 THE COURT: That's fine.

24 THE WITNESS: I'm sorry, I don't see them.

25 BY MR. BRACCIO:



1 Q. The second question down: Does she have any other medical  
2 problems at all? She's -- I think the biggest medical problem  
3 she's ever had is she's slightly anemic.

4 A. Oh, yes, I see that.

5 Q. 5208. Right in the middle of the page.

6 THE COURT: Still the same exhibit?

7 MR. BRACCIO: Still the same exhibit, yes.

8 BY MR. BRACCIO:

9 Q. Right there, the third question down: She's a skinny  
10 little thing, too? And Angela Gray replies: She is tiny.

11 A. Yes.

12 Q. So based upon what Angela Gray is telling detectives, there  
13 had never been any major medical issues with this child  
14 requiring hospitalization, correct?

15 A. I am not a hundred percent sure about that.

16 Q. Okay. In your files, did you have any other documentation  
17 that Rachel Gray had ever had any other major medical injuries?

18 A. No.

19 Q. Prior to Angela and her children moving in with Barry  
20 Jones, no one had ever hurt the kids, correct?

21 A. I don't know that.

22 Q. Okay. This is Exhibit 1, Bates Number 576, at Line 5.

23 A. I am not sure what you're asking me.

24 Q. Okay. I'm asking you if Angela had reported to detectives  
25 that, prior to moving in with Barry Jones, no one had ever hurt

1 the kids before.

2 A. You're asking me if that's what Line 5 says?

3 Q. Correct. And Line 21.

4 A. Line 5 says: He has never, ever hit the kids or me. But I  
5 don't know who she's talking about.

6 MR. BRACCIO: Scroll.

7 BY MR. BRACCIO:

8 Q. Okay. Maybe Line 21 will clear it up for us.

9 A. Line 21 says: Oh, no, no, no. He -- nobody has ever hurt  
10 my kids. He used to slap me.

11 THE COURT: Okay. Counsel, I'm sorry, but this keeps  
12 referring to "he," and it's not clear from this document  
13 whether -- who the "he" is that the witness is referring to --

14 MR. BRACCIO: Back up a page.

15 THE COURT: -- that Ms. Gray is responding.

16 BY MR. BRACCIO:

17 Q. Do you recall that Angela was talking about her  
18 ex-boyfriend, Zoly?

19 A. No.

20 Q. Let's scroll down to 575 at the bottom.

21 THE COURT: Again, this is just earlier in the same  
22 interview?

23 MR. BRACCIO: Correct.

24 THE COURT: I just want to make sure -- we're jumping  
25 around a bit.

1 MR. BRACCIO: Right.

2 THE COURT: Maybe you can help me understand. This is  
3 an interview by whom of --

4 MR. BRACCIO: Sure.

5 BY MR. BRACCIO:

6 Q. Do you recall that Angela Gray gave three statements to  
7 detectives in this case?

8 A. I don't recall that, but if that's what the record says --

9 Q. Okay.

10 A. -- then....

11 MR. BRACCIO: Your Honor, this is -- I can pull them  
12 up, each by individual Bates numbers, but Angela Gray gave --

13 THE COURT: I just think you need to let the witness  
14 know what interview you're talking about and who the "he" is  
15 that Ms. Gray is referring to, because it's not clear to me who  
16 she is talking about.

17 MR. BRACCIO: Okay.

18 BY MR. BRACCIO:

19 Q. Go back to 576 at Line 21.

20 At Line 21, Angela tells detectives "nobody has ever hurt  
21 my kids," correct? "Nobody." She's not referring to a single  
22 person. She's saying "nobody has ever hurt my kids."

23 A. Yes, she says, "he, nobody, has ever hurt my kids."

24 Q. Angela's sister Amanda told detectives that she had also  
25 never seen any children with bruising before Angela and the

1 kids moved in with Barry Jones, do you recall that?

2 A. I don't.

3 Q. Exhibit 1, 2294. Last paragraph.

4 A. Can you ask me the question again, please.

5 Q. Of course. If at any time you want me to pull this  
6 interview back up to the front page so you can see who it is,  
7 or the top of the page will usually indicate who is being  
8 interviewed, I am happy to do that.

9 A. This says "medical record."

10 Q. Right. Okay.

11 A. I don't really know what this is.

12 Q. Okay.

13 A. Got it. All right. So it's from the University Medical  
14 Center. From.... I'm not sure what....

15 THE COURT: I'm sorry. Counsel, you know, look, this  
16 isn't a guessing game where the witness is supposed to try to  
17 figure out what the exhibit is. Can you just identify what the  
18 exhibit is, the proposition for which you're purporting this.

19 MR. BRACCIO: Yes.

20 BY MR. BRACCIO:

21 Q. Judge Bowman, this comes from your trial file, and this is  
22 a document of the medical center report talking about the  
23 children. So you had this in your file when you were preparing  
24 for Barry Jones' trial.

25 A. Okay. I see now it's dated May 9th, 1994.

1 Q. Correct. So at the bottom of that page they document that  
2 Angela Gray's sister, Amanda, reported that she had never  
3 observed any bruising on any of the children before, correct?

4 A. She said she had not seen any bruising in the past.

5 Q. Correct.

6 Okay. Let's go to Exhibit 66, Bates Number 4904. This is  
7 Amanda's Gray's police interview.

8 At the very top of the page, the question is does she also  
9 confirm this statement to detectives: So this is the first  
10 time you saw any kind of bruising on any of them?

11 A. She said she hadn't seen the kids a lot, but she never felt  
12 that the children were in physical danger.

13 I don't see anything about bruising. In the question I do,  
14 but not in the answer.

15 Q. Okay. Just establishing that she had never felt that the  
16 children were in any danger anywhere else.

17 A. Right.

18 Q. Okay. Let's pull up 4748.

19 THE COURT: It's all from the same exhibit?

20 MR. BRACCIO: There's four exhibits that these are in.  
21 This, I believe, was from -- this is from the disclosure, Your  
22 Honor. I can find that number.

23 THE COURT: I think it's important so that we have an  
24 accurate record.

25 BY MR. BRACCIO:

1 Q. You learned that Barry Jones used methamphetamines pretty  
2 extensively and sold drugs, correct?

3 A. Yes.

4 Q. According to Terry Shane, he sold a lot of drugs? This is  
5 Exhibit 66, Bates 4950.

6 A. Terry -- this looks like Terry Richmond.

7 Q. Correct. If you'll recall, Terry Richmond was the son of  
8 Joyce Richmond, who was Barry Jones' girlfriend.

9 A. I don't exactly recall that, but -- and I am sorry, what's  
10 the question?

11 Q. The question was you knew that Barry Jones sold a lot of  
12 drugs, methamphetamines.

13 A. I did.

14 Q. And his connection for his drugs, Hal, got busted and he  
15 had a chop shop. Do you recall that?

16 A. I don't remember that.

17 MR. BRACCIO: Scroll down. This is 4950.

18 THE COURT: This is Page 4950 of what?

19 MR. BRACCIO: Bates number of Exhibit 66.

20 Tell you what, we'll move on.

21 BY MR. BRACCIO:

22 Q. You recall that Barry Jones sold a lot of drugs.

23 A. I don't know that I knew he sold a lot of drugs. I knew he  
24 was doing methamphetamine. I knew that there were drugs sales.

25 I don't remember a lot of the detail about that.

1 Q. Do you recall that numerous witnesses described that he  
2 used a lot of drugs?

3 A. I don't recall what witnesses exactly told me.

4 Q. Okay. Exhibit 66, Bates Number 926.

5 THE COURT: Now this is going to be referring to  
6 Exhibit 1?

7 MR. BRACCIO: Exhibit 1.

8 THE COURT: Page 926.

9 MR. BRACCIO: Bates Number 926.

10 THE COURT: What is it?

11 MR. BRACCIO: This is a police interview of Carol  
12 Jones, who was Barry Jones' ex-wife.

13 THE COURT: Go ahead.

14 BY MR. BRACCIO:

15 Q. Do you recall that Carol, Jones' ex-wife, indicated that he  
16 was using coke, speed, whatever he could get his hands on?

17 A. Yes. She was asked what kind of drugs he was using then.  
18 I'm not sure when "then" was. But I knew he was using drugs.

19 Q. Do you recall that Rosemary St. Charles also confirmed that  
20 he was using drugs around the time that he was living with  
21 Angela Gray and her children?

22 A. I don't remember that it came from her.

23 Q. Do you recall that Angela did methamphetamines?

24 A. I knew that.

25 Q. Do you recall that Angela and Barry did crystal

1 methamphetamines together four or five days before Rachel's  
2 homicide?

3 A. I think that's right.

4 Q. Barry even admitted in a police interview that he did  
5 methamphetamines four or five days before Rachel's homicide,  
6 correct?

7 A. I don't remember that it came from the police interview,  
8 but I knew that information.

9 Q. You did know that he was doing drugs four to five days  
10 beforehand?

11 A. Yes.

12 Q. You had a lot of problems with witnesses in this case,  
13 including Brandie Jones, correct?

14 A. What do you mean?

15 Q. I'll tell you what, I'll come back to that. Let's start  
16 with the timeline.

17 Through the police investigation and your own  
18 investigation, you knew a lot of the following, correct? At  
19 one point Barry Jones had been charged with statutory rape?

20 MR. SANDMAN: Your Honor, excuse me, I am sorry to  
21 interrupt. We saw that one item at the top of the timeline and  
22 checked it out and noticed at Page 2404 of Exhibit 1 that  
23 certain records regarding Mr. Jones as a juvenile were not even  
24 subpoenaed until after the trial, on May 8th, 1995, and I don't  
25 see how any of this would be relevant to what trial counsel



1 knew before the trial.

2 Secondly, there is no record anywhere in Mr. Jones'  
3 juvenile record that he was actually adjudicated for statutory  
4 rape. There is a reference to it, which I understand was  
5 really two 16-year-old kids who may have had some kind of  
6 consensual I-don't-know-what.

7 But there is no record of a statutory rape. There's a  
8 reference to it in some juvenile records that were received  
9 after the jury trial. Obviously this sort of character  
10 evidence would never go to a jury, but if it's intended to show  
11 what the lawyers knew before trial, they didn't have this  
12 information.

13 THE COURT: I think she can answer the question as to  
14 whether or not she knew of it, because I think that's the  
15 question. So I understand your concern. Because it's not  
16 really framed as an objection, I'll take it as a concern.

17 Why don't you answer the question.

18 A. I don't remember that.

19 MR. BRACCIO: Let's pull up Exhibit 1, Bates 2248.

20 Go down to 2450, please. That top paragraph there.

21 BY MR. BRACCIO:

22 Q. Barry was referred to the Vision Quest program by the  
23 Juvenile Court authorities of Cochise County. He entered the  
24 program on December 19th, 1974. The reason for his admission  
25 was the charge against him of statutory rape.

1 Do you recall that now?

2 A. I don't. I do remember something about Vision Quest, but I  
3 don't remember any of the specifics.

4 Q. Do you recall that Barry Jones also had a prior felony for  
5 exhibiting a deadly weapon on June 12th, 1978?

6 A. I remember there was some kind of prior criminal history,  
7 but I don't remember the details or the timing.

8 Q. On your screen should be that prior felony.

9 THE COURT: Again, exhibit and page number?

10 MR. BRACCIO: Yeah. I'm sorry, Your Honor.

11 That's Exhibit 1, Bates 2302.

12 THE COURT: Thank you.

13 BY MR. BRACCIO:

14 Q. Do you recall that Barry Jones married a woman named Carol  
15 and had children with her, including Brandie Jones?

16 A. I knew that, yes.

17 Q. And you learned from police reports that Carol showed up to  
18 the police department the day after Rachel's death stating that  
19 Barry Jones had previously beat their children?

20 A. I remember that she came forward, and I remember she  
21 provided some sort of negative information, but I don't  
22 remember those specifics.

23 Q. Okay. This is Exhibit 1, Page 916. This is an interview  
24 with Carol Elaine Jones with Detective O'Connor?

25 A. Yes.

1 Q. In the highlighting there she indicates that she had been  
2 married to Barry.

3 A. Yes.

4 THE COURT: She's waiting for a question.

5 MR. BRACCIO: I thought I'd asked the question.

6 BY MR. BRACCIO:

7 Q. So you learned from the police reports that Carol showed up  
8 to the police department the day after Rachel's death stating  
9 that Barry Jones had previously beat their children, correct?

10 MR. SANDMAN: Your Honor, I object because -- I guess  
11 I'm not seeing that in the document, any beating or the  
12 reference to it. Maybe I missed it.

13 A. You're saying it was more than a spanking, it was, like,  
14 overdoing it?

15 BY MR. BRACCIO:

16 Q. Correct.

17 A. I see that. I don't remember that, but I see it.

18 THE COURT: I'm sorry. Your question is was she aware  
19 of this information?

20 MR. BRACCIO: Correct.

21 THE COURT: So that's the question to you: Were you  
22 aware of this information at the time?

23 THE WITNESS: I don't remember that, but I see it in  
24 the transcript.

25 MR. BRACCIO: Okay.

1 BY MR. BRACCIO:

2 Q. Carol also told detectives that when they were married  
3 Barry Jones lost his job and became increasingly violent and  
4 was doing drugs. Do you recall that?

5 A. I don't recall.

6 Q. 918. Go up right there at the very top.

7 That large paragraph right there, "was there ever a time?"

8 A. Yes.

9 Q. Does that refresh your recollection that she told  
10 detectives that when she was married to Barry he lost his job  
11 and became increasingly violent and was doing drugs?

12 A. I don't recall it, but I see it in the transcript.

13 THE COURT: I'm sorry. Just to make sure that I am  
14 following this, these exhibits that you are referring to are  
15 exhibits that came from the witness' files in regard to this  
16 case?

17 MR. BRACCIO: Correct, Your Honor. I'm sorry if I  
18 have not been clear --

19 THE COURT: I just want to make sure that we're all on  
20 the same page here. So that's the source of the exhibits  
21 you've been referring to. You're now asking her specific  
22 questions about whether or not she remembers this information  
23 that were in her files at that time.

24 MR. BRACCIO: Correct.

25 THE COURT: Go ahead.

1 BY MR. BRACCIO:

2 Q. In your file, just to make sure we're very clear, you had  
3 all the police reports in this case, all the police interviews,  
4 all of your witness interviews, and the disclosures from the  
5 state, correct?

6 A. Yes.

7 Q. That makes up almost the entirety of your file, with the  
8 exception of your notes?

9 A. Yeah, and maybe some motions, letters, you know, the  
10 regular things that would be in the file.

11 Q. Sure. Carol also told police that Barry Jones threatened  
12 to kill their children if she left, do you recall that?

13 A. I don't. I see it in the transcript.

14 THE COURT: I think we moved to a different page. So  
15 if you can make sure that we're -- exhibit number and page.

16 MR. BRACCIO: Sorry, Your Honor. I will get that  
17 down. That is Bates Number 920.

18 THE WITNESS: Yes.

19 MR. BRACCIO: Bates Number 927.

20 BY MR. BRACCIO:

21 Q. So between Pages 927 and 928 here, in Exhibit 1, Carol told  
22 detectives that he had threatened to kill the children if she  
23 left.

24 A. It says he was calling her on the phone and saying he was  
25 "going to kill me and the kids." I'm not sure who "her" was.

1 But that's what it says.

2 Q. You're indicating that you have a problem with what part of  
3 that?

4 A. No, I don't have a problem.

5 THE COURT: She said it doesn't indicate who "her"  
6 was.

7 MR. BRACCIO: Got it. That's okay.

8 BY MR. BRACCIO:

9 Q. Carol reported to police that Jones had hit his children on  
10 numerous occasions and that these hits were excessive, do you  
11 recall that?

12 A. Is that what we just looked at, where she said it was more  
13 than a spanking?

14 Q. Correct.

15 Why don't we pull up the defense interview. This is  
16 Exhibit 1, Page 962. I have line numbers for this, Lines 5  
17 through 27. At Lines 5 through 27 there.

18 A. You're asking me if she told me this or if she told the  
19 police things?

20 Q. Yes. Carol Jones was interviewed by police, she came  
21 forward the day after Rachel's death, correct?

22 A. But this is an interview -- this is me interviewing her.

23 Q. Correct. So this would be part of your trial file, right?

24 A. Right.

25 Q. So this would be something that you were aware of in

1 preparing a defense for Barry Jones, correct?

2 A. Yes.

3 Q. So you did an interview of Carol Jones in this case,  
4 correct?

5 A. Yes.

6 Q. And this is that defense interview?

7 A. Yes.

8 Q. So at Lines 5 through 27, Carol Jones tells you that he had  
9 hit his children on numerous occasions and the hits were  
10 excessive, correct?

11 A. I'm sorry. Where is that?

12 Q. Lines 5 through 27.

13 A. I can't see.

14 MR. BRACCIO: Can we scroll up that Line 5, please.

15 THE COURT: If you're asking to read all the way down  
16 to 27, it only goes to 24.

17 MR. BRACCIO: Oh, geez.

18 THE WITNESS: I'm sorry, can you ask the question  
19 again?

20 BY MR. BRACCIO:

21 Q. No problem. I think the difficulty is I'm trying to  
22 refresh your recollection with the document but I am asking the  
23 question beforehand.

24 A. Yeah, this doesn't refresh my recollection. If you're  
25 asking me what's in the transcript --

1 Q. Correct.

2 A. -- I am happy to confirm that, but I don't remember this.

3 Q. Okay. Do you recall that he would use a belt or his hand  
4 or his elbow and he struck them in the head or shoulder?

5 A. Where is that?

6 Q. It's on this page, Lines 18 through 22.

7 Well, yeah, I mean, for them being kids, he did leave marks  
8 on them. I mean, like the belt. But not bruises or nothing  
9 like that. He only gave them three swats. But it was, like,  
10 his anger.

11 THE COURT: So, counsel, I think what the witness has  
12 said is that she's read it, she doesn't dispute what's in the  
13 transcript, but it's not refreshing her recollection.

14 MR. BRACCIO: Okay.

15 THE WITNESS: Yeah, I just don't remember. I know  
16 there were problems in the marriage. I know that she reported  
17 that I think he was drinking and maybe using drugs, that he was  
18 aggressive with her and the children. I just don't remember  
19 all the details that are in the interviews.

20 But if it's in these transcripts and I had these in my  
21 file, I was aware of it because I read everything.

22 BY MR. BRACCIO:

23 Q. Exhibit 66, Bates 4894.

24 Do you recall that Carol --

25 THE COURT: I'm sorry. This is again what?



1 MR. BRACCIO: This is Exhibit 66 --

2 THE COURT: I know the number, but what is it?

3 MR. BRACCIO: This is the police report by Detective  
4 O'Connor that would have been part of the Bates -- part of the  
5 original disclosures from the state, the police reports.

6 THE COURT: Fine. Go ahead.

7 BY MR. BRACCIO:

8 Q. Do you recall that she told detectives that Barry would  
9 elbow their child in a backhand fashion while they were trying  
10 to leave a room at the same time?

11 A. I don't recall it, but I see it in the report.

12 Q. That he would backhand elbow them? If they were behind  
13 him, he would swing his elbow back and strike them?

14 A. He would elbow the child in a backhand fashion while they  
15 were trying to leave the room at the same time he was.

16 MR. BRACCIO: Exhibit 1, 935.

17 THE COURT: And this is?

18 MR. BRACCIO: This is Exhibit 1. I'm sorry.

19 THE COURT: I heard the numbers, I just need to know  
20 what it is.

21 MR. BRACCIO: This is the Carol police interview.

22 THE COURT: What's your question?

23 BY MR. BRACCIO:

24 Q. That Barry Jones would, quote, backhand elbow them. If  
25 they were behind him, he would swing his elbow back and strike

1     them?

2     A.   I'm sorry, where is that?

3                 THE COURT:   I'm sorry.   Wait.   Are you asking her if  
4     she remembers that information?

5                 MR. BRACCIO:   Yes.

6                 THE COURT:   So that's the first question to you:   Do  
7     you remember that information?

8                 THE WITNESS:   I don't.

9                 THE COURT:   Is there someplace in here you want her to  
10    read?

11    BY MR. BRACCIO:

12    Q.   At the top of that page.   When you say, "elbow," how would  
13    you describe that?   On the way you're describing.   She answers:  
14    Backhand, elbow.   Then he would swing his elbow back and  
15    strike?   Yeah.

16    A.   I'm sorry.   Where?

17    Q.   It's right in the middle of the page.

18    A.   Okay.   I got it.   So the question is he would swing his  
19    elbow back and strike them that way, and she said yeah.

20    Q.   Do you recall that Carol provided the names of her sisters  
21    who would corroborate this abuse?

22    A.   I don't recall that.

23    Q.   Go to 922 at the bottom.   Keep going down.

24                 This is, again, the police interview of Carol Jones.

25    A.   Yes.

1 Q. And she provided the names of her sisters who would  
2 corroborate all the abuse of Barry Jones against his children?

3 A. Yes.

4 Q. Carol eventually got to a point where she was not  
5 comfortable leaving the kids alone with Barry Jones and would  
6 have her mother come stay with them, do you remember that?

7 A. No.

8 Q. This is Exhibit 1, 951, at Lines 15 through 25.

9 A. I'm sorry, will you ask me the question again.

10 Q. Sure. Of course. The question was Carol eventually got --  
11 Carol told detectives that she eventually got to a point where  
12 she was not comfortable leaving the kids alone with Barry Jones  
13 and would have her mother come stay with them, correct?

14 A. She said that she had her sisters and her mom watch the  
15 kids in the last year of their relationship.

16 Q. And the reason she said that is because they're talking  
17 about the prior abuse, correct?

18 A. She said she was worried about some bruising she saw on  
19 Brandie and she thought that Barry had done that by taking the  
20 belt to the kids. She said it was just one time.

21 Q. Okay. Let's go to Exhibit 1, 966, 1 through 11.

22 A. Oh, this one says that. I asked her: Were you not  
23 comfortable leaving the kids with him? And she said yeah.

24 Q. Correct. And Carol eventually had to get a restraining  
25 order against Barry Jones because of the violence against his

1 own children. That's something you knew in this case, correct?

2 A. I don't remember that now, but if it's in the file then I  
3 knew it.

4 Q. You don't recall the order of protection?

5 A. I don't remember that.

6 Q. Pull up 2238. This is in exhibit -- oh, this is a  
7 disclosure.

8 Go to 922, Exhibit 1. Pull up the restraining order. It's  
9 2238.

10 Okay. This is the order of protection that Carol Jones  
11 filed against Barry Jones, correct?

12 A. Yes.

13 Q. Okay. And she felt that they were, quote, in imminent  
14 danger?

15 A. I can't see that.

16 Q. Right there.

17 MR. SANDMAN: Your Honor, I'm sorry, I guess I have to  
18 register an objection because that page is a CPS temporary  
19 custody notice. It has nothing to do with an order of  
20 protection. It's a completely different document. The page  
21 above it was an order of protection. This is an Arizona  
22 Department of Economic Security Temporary Custody Notice.

23 MR. BRACCIO: I can clarify.

24 BY MR. BRACCIO:

25 Q. As of April of '92, Carol Jones is reporting that Brandie

1 Jones, her daughter, is in imminent danger, correct?

2 A. I don't know.

3 THE COURT: Wait. Are you saying this wasn't in her  
4 file?

5 MR. SANDMAN: I'm saying that we went from a question  
6 about an order of protection to the document that is up on the  
7 screen, which has nothing to do with an order of protection.  
8 It's a temporary custody notice, which resulted from Brandie  
9 jumping out of a moving car that her mother was driving. And I  
10 think we're going to need -- I'm sorry, I have to object  
11 because there's -- counsel's characterizing this as a document  
12 that it is not and is suggesting that the report resulted from  
13 a report against Mr. Jones, which it is not. It was related to  
14 Brandie jumping out of a moving car that her mother was  
15 driving.

16 THE COURT: I think you've cleared it up. Are you  
17 disputing the fact that it's two different documents?

18 MR. BRACCIO: Go to the top of the screen of the order  
19 of protection. I think this document may be attached to the  
20 order of protection.

21 MR. SANDMAN: I'm sorry, there is no evidence of that.  
22 You know, I can't simply allow people to be guessing about  
23 whether documents are attached or not attached. There's an  
24 entire CPS file regarding that temporary custody notice. I  
25 don't have it at my fingertips, but we could produce it fairly

1 quickly if we had to. It has nothing to do with the order of  
2 protection.

3 THE COURT: Could you go to the next page for me,  
4 please. Scroll down, please.

5 MR. SANDMAN: Judge, I believe that CPS report is  
6 dated in April of '92 and the protective order --

7 THE COURT: July of '92.

8 MR. SANDMAN: -- was May, so obviously the April  
9 report couldn't be attached to the May report.

10 THE COURT: Could you go up to the...?

11 BY MR. BRACCIO:

12 Q. Do you recall in Carol Jones' interview that she told  
13 police --

14 MR. BRACCIO: I'm sorry, Your Honor. Do you want us  
15 to go back?

16 THE COURT: I do. I think we need to answer this  
17 question.

18 MR. BRACCIO: Okay. I was trying to answer it in a  
19 different fashion, because I believe Carol Jones told police  
20 that she had taken out the restraining order on Barry Jones, so  
21 I was just going to use her testimony to establish that point.

22 It sounds like Mr. Sandman's --

23 THE COURT: Mr. Sandman is concerned that you're  
24 conflating two different documents and that one may be  
25 referring to -- not to Mr. Jones. That the -- this is the

1 first page.

2 MR. BRACCIO: No.

3 THE COURT: Hold on. I can't even read the date on  
4 this thing. If you go down on this 5/30/ -- does that say '90?

5 MR. BRACCIO: '92. I believe it was 1992. This was  
6 two years before this case.

7 THE COURT: If you'd go to on the next page.

8 MR. BRACCIO: The date on that is 4/9/92.

9 So my understanding was the document was filed by Carol  
10 Jones with the Department, with DES, reported that she felt the  
11 children were in imminent danger and then ultimately obtained  
12 the order of protection.

13 MR. SANDMAN: You know, I'm sorry, Judge, but we  
14 would -- there is just no evidence of that other than counsel's  
15 interpretation. I think -- I am very concerned combining  
16 documents --

17 THE COURT: I understand the objection.

18 Ask your next question.

19 MR. BRACCIO: Sure.

20 BY MR. BRACCIO:

21 Q. Judge, there is an order of protection in your files,  
22 correct?

23 A. Yes.

24 Q. And this was about two years before Rachel's homicide?

25 A. Can I see the order of protection again? I'm sorry.

1 Q. Yeah. Scroll up.

2 A. You're saying that says May, something, 1992?

3 Q. Correct.

4 A. I can't tell that that's what it says, but if it does say  
5 that, it's about two years before Rachel's death.

6 THE COURT: Just to add to the confusion, this  
7 document is referencing concern about Mr. Jones committing  
8 domestic violence upon Carol Jones. And the next page is  
9 discussing Brandie Jones. Which, I tend to agree with  
10 Mr. Sandman, these seem to be talking about two completely  
11 different things.

12 MR. BRACCIO: So, Your Honor, I guess it is ordered  
13 that Barry Lee Jones -- the first box is checked -- shall  
14 commit no domestic violence upon Carol E. Jones, comma; Brandie  
15 Jones on the next line there, comma; I can't read the second  
16 name, comma; Andrew Jones. So it's all of the children.

17 THE COURT: Well, if you can sometime in the future  
18 establish that the second page was somehow attached to the  
19 first page, I'll consider it. But for the time being, I'm  
20 sustaining the objection.

21 So go ahead and ask your next question.

22 MR. BRACCIO: Sure.

23 BY MR. BRACCIO:

24 Q. Carol eventually separated from Barry Jones, do you recall  
25 that?



1 A. Yes.

2 Q. So, continuing on, you had reports very early on in your  
3 investigation that Barry was suicidal, out of work, recently  
4 separated from Carol, and in possession of loaded guns around  
5 May of 1992, correct?

6 A. I don't specifically remember all of those things.

7 Q. Okay. Exhibit 1, Bates 2304. 2309.

8 I can move on while we're waiting for that.

9 Let's talk about Angela and her children. Do you recall  
10 Angela lived with a man named Zoly for two and a half years  
11 before she met and moved in with Barry Jones?

12 A. Yes.

13 Q. And Angela repeatedly told detectives that Zoly was really  
14 good with the kids, he never abused any of them?

15 A. I don't exactly remember that. I remember she had to send  
16 someone to get the children when she left. I think he liked  
17 them, but I don't remember what the situation was exactly.

18 Q. This is Exhibit 66. 5183.

19 So this is a police interview with Angela Gray?

20 A. Yes.

21 Q. Angela told detectives that Zoly was really good with the  
22 kids, he never abused any of them.

23 A. Where is that? Is that on this page?

24 Q. Yeah, it should be. Scroll up one more page, Daniel.

25 So at the bottom there, said: I lived with Zoly for like

1 two and a half years.

2 A. Yeah.

3 Q. Zoly is the individual that you were referring to earlier  
4 when it indicated that he may be a suspect in this case?

5 A. I don't remember that. I think it was information that he  
6 gave about maybe -- maybe about Johnny. I am not sure. I  
7 don't remember that.

8 Q. Okay. Scroll down.

9 So Detective Pesquiera, I believe in this case, was asking  
10 you about -- asking Carol -- asking Angela Gray about Zoly --

11 A. Yes.

12 Q. -- and she indicated that she never had any problems with  
13 him, he was really good with the kids. At the very top of  
14 that:

15 Question: Did you ever have any problems with him the way  
16 he treated her?

17 Not with the way he treated her. I did have some problems  
18 with the way he treated me.

19 A. Is "her" Rachel?

20 Q. Scroll up.

21 Rachel.

22 A. Yeah, it says he was close to Rachel.

23 Q. Correct.

24 A. And that he had -- let's see. He didn't -- she didn't have  
25 problems with the way he treated Rachel.

1 Q. And right at the top of there, again, Exhibit 66, Bates  
2 Number 5182, at the bottom, Carol Jones told detectives that  
3 Rachel knew that Zoly was her dad and she was really close to  
4 him, correct?

5 A. Angela Gray said that as far as Rachel knew, that that was  
6 her dad and that they were really close.

7 Q. But you did learn that Angela spanked Rachel and Rebecca,  
8 but not Johnny. Do you recall that?

9 A. I don't remember that.

10 Q. Exhibit 1, Bates 1184, Line 1.

11 A. I'm sorry, what is this?

12 Q. This is Rebecca's defense interview with you.

13 A. I don't see my initials on this.

14 Q. The "DD" would be David Darby, who conducted all the  
15 witness interviews with you.

16 A. But I was present for this?

17 Q. Correct. You also asked questions during all of those,  
18 correct?

19 A. I think I -- I don't see me on here but --

20 THE COURT: Is there some record or indication that  
21 she was at this particular interview?

22 MR. BRACCIO: Yes. So if you go up to the top of this  
23 interview.

24 BY MR. BRACCIO:

25 Q. In fact, from looking at the witness interviews, you had

1 begun all of the witness interviews, correct?

2 A. I don't remember that, but I see that I started this one.

3 Q. So this was your interview, your defense interview, with  
4 Rebecca Lux, correct?

5 A. Yes.

6 Q. So you learned -- she told you that Angela spanked Rachel  
7 and Rebecca but didn't hit Johnny?

8 A. I don't remember that, but if it's in here....

9 THE COURT: I'll tell you what, we're going to take a  
10 brief break. I'd like to meet with counsel back in the jury  
11 room for a moment. We're going to take about a five,  
12 five-minute break.

13 (A recess was taken from 3:48 p.m. to 4:02 p.m.)

14 THE COURT: All right. Go ahead.

15 BY MR. BRACCIO:

16 Q. Judge Bowman, do you recall that in your interview of  
17 Rebecca....

18 MR. BRACCIO: I'm sorry, Your Honor. Can I have one  
19 moment?

20 THE COURT: Not a problem.

21 BY MR. BRACCIO:

22 Q. Do you recall in your interview with Rebecca Lux on October  
23 31, 1994, you asked her whether her older brother, Jonathan  
24 Lux, had ever hit or hurt Rachel?

25 A. I don't remember.

1 Q. 1185. Lines 6 through 19.

2 So you asked her: Okay. What about Johnny? Did Johnny  
3 ever hit Rachel? Rebecca responded no.

4 I'm sorry. David Darby asked: Did you ever see Johnny hit  
5 Rachel? Answer: No. All right. What about you, did Johnny  
6 ever hit you? No. Did you guys ever get into a brother and  
7 sister fight? Yeah. Pushing and shoving sometimes? Yes. Did  
8 he ever push you down? We'd play fight.

9 Correct?

10 A. Yes.

11 Q. She also told you that Jonathan was always careful when he  
12 played with Rachel so as not to hurt her because she was so  
13 little, correct?

14 A. Yes.

15 Q. She said that Jonathan was never aggressive or mean, never  
16 had tantrums or picked fights with people, he was a normal kid,  
17 correct?

18 MR. BRACCIO: Line 5. I'm sorry, Daniel, it's --

19 THE COURT: I think you had it and then you scrolled  
20 up.

21 THE WITNESS: It's asked if he was a pretty normal  
22 kid, and she said yes.

23 MR. BRACCIO: Scroll down.

24 BY MR. BRACCIO:

25 Q. Then David Darby asked: Okay. Have you ever known him to

1 get aggressive or be mean or pick fights with people? No. He  
2 was pretty mellow? Yes.

3 A. Yes.

4 Q. Rebecca also said that she would never fight with or hurt  
5 Rachel, do you recall that?

6 A. I don't.

7 Q. Again, for reference, this is Exhibit 1, Bates Number 1186.  
8 Same interview.

9 A. I'm sorry --

10 Q. Lines 15 through 20. David Darby asked her: Did you and  
11 Rachel ever have real fights? Answer: No. Have you ever  
12 pushed Rachel down? No. Has she ever got hurt? No.

13 A. Yes, that's what it says.

14 Q. Confirming that these children were never seriously injured  
15 in the past, Angela's aunt, Donna Marini, told you that she saw  
16 the kids four or five times in the year before she moved out to  
17 Tucson, before Rachel's death. Do you recall that?

18 A. I don't.

19 Q. Exhibit 1, Bates 1248.

20 THE COURT: That's an interview?

21 MR. BRACCIO: Scroll up. Yeah, thank you, Your Honor.

22 THE COURT: Just so the record is clear, that's an  
23 interview on --

24 BY MR. BRACCIO:

25 Q. This was your interview of Donna Marini on October 31st,

1 1994?

2 A. Yes.

3 Q. At Line 25, you asked or David Darby asked: Did you have  
4 much contact with Angela and the kids prior to all this  
5 business happening with Rachel? Donna Marini responded: No,  
6 I'd only been out here about a year, it wasn't even a year,  
7 when Rachel died, and I tried to make contact but she very much  
8 kept to herself.

9 Then she answered at Line 32: I'd only seen them maybe  
10 four times in that year that I'd come out.

11 Correct?

12 A. Yes.

13 Q. The only evidence of any sort of sexual predator in Barry  
14 Jones' trailer park was a report by Brandie that the neighbor,  
15 Bob Dresbach, had touched her in June of '93. Do you recall  
16 that?

17 A. No.

18 Q. Exhibit 1, Bates 2196. It indicates --

19 THE COURT: No, what is it?

20 BY MR. BRACCIO:

21 Q. This is, again, a DES report, Child Protective Services  
22 Intake and Investigative Report, dated 7/14/93, correct?

23 A. Yes.

24 Q. This would have been, again, in your files?

25 A. I don't remember it, but if it was in my file then I had

1 it.

2 Q. So it states Rebecca states told babysitter that when she  
3 went home to feed dogs, Robert, the suspect, said, quote: I  
4 would rather have you -- in essence, he'd fondled her breasts  
5 over shirt, then moved hands to shoulders and began pelvic  
6 thrust from behind her. This is Brandie's accusation?

7 A. Yes, that's what it looks like.

8 Q. And Brandie's report was sent to detectives in the sex  
9 crimes unit, correct? Do you recall that?

10 A. I don't know that.

11 Q. So, Exhibit 1, this is a Pima County Sheriff's Department  
12 report?

13 A. Yes.

14 THE COURT: The Bates number?

15 MR. BRACCIO: The Bates number is 2198 to 2199.

16 THE COURT: Is that part of Exhibit 1?

17 MR. BRACCIO: Correct.

18 THE COURT: It's dated when?

19 MR. BRACCIO: This is dated June 15th of '93.

20 THE WITNESS: Yes.

21 BY MR. BRACCIO:

22 Q. So Brandie's report then was sent to detectives in the sex  
23 crimes unit?

24 A. If that's what this report means. I don't know that.

25 Q. Okay. And there's nothing else in this record -- have you



1 seen anything else in this record that anything has happened as  
2 a result of this police report?

3 A. No.

4 Q. Whether the police could corroborate this or not?

5 A. Not that I recall.

6 MR. SANDMAN: Your Honor --

7 MR. BRACCIO: I'm moving on from this, Your Honor.

8 MR. SANDMAN: My objection is that the first document,  
9 the first CPS report, was a complaint against one of the  
10 neighbors of Mr. Jones.

11 THE COURT: Correct.

12 MR. SANDMAN: Now this report appears to be leveled  
13 against a different individual, Ronald St. Charles, who is not  
14 a neighbor of Mr. Jones.

15 THE COURT: There's an inconsistency there.

16 MR. SANDMAN: There's some conflating of these  
17 documents again. Yes, that's my objection.

18 THE COURT: Are you asserting that the first report  
19 that we looked at is the same person who's in this report?

20 MR. BRACCIO: Scroll down, Daniel, to 2199. Maybe  
21 this is the better document.

22 BY MR. BRACCIO:

23 Q. Why don't we just look at 2199. This is the Pima County  
24 Sheriff's Department report, where Brandie reports she was  
25 touched inappropriately by a neighbor in the trailer park, Bob

1 Dresbach, correct?

2 MR. SANDMAN: Your Honor, I guess I would note a  
3 relevancy objection to some third party inappropriately  
4 touching one of Mr. Jones' children. I'm not sure what that  
5 has to do with any of the issues in the case. It's obviously  
6 an unfortunate incident, but I don't see the relevance.

7 THE COURT: What's the relevance?

8 MR. BRACCIO: I can certainly respond to that. There  
9 has been an accusation against these attorneys that they failed  
10 to investigate any other suspects in the area and that they  
11 exclusively focused on Barry Jones and only to that Sunday.  
12 This establishes pretty clearly it's in her files, she's aware  
13 of these other suspects or these other people in the trailer  
14 park.

15 THE COURT: I'm going to overrule the objection. Go  
16 ahead.

17 MR. BRACCIO: We'll move on.

18 BY MR. BRACCIO:

19 Q. Let's talk about the facts that detectives and you gathered  
20 in the months before Rachel's homicide.

21 Do you remember Ronald St. Charles?

22 A. Yes.

23 Q. He was a friend of Barry Jones?

24 A. Yes.

25 Q. He used to live in the Desert Vista Trailer Park with Barry

1 Jones?

2 A. I don't remember that.

3 Q. Exhibit 1, 1537. Hold on right there.

4 This is your interview of Ron St. Charles, correct?

5 A. Yes.

6 Q. In this interview, you actually didn't indicate what date  
7 you were doing this on, correct?

8 A. Correct.

9 MR. BRACCIO: 1537.

10 THE COURT: Just a point of clarification. Is it fair  
11 to assume, Judge Bowman, this was done at the time you were  
12 interviewing other witnesses in preparation for the trial in  
13 this case?

14 THE WITNESS: Yes, it is.

15 THE COURT: Thank you. Go ahead.

16 BY MR. BRACCIO:

17 Q. Line 16: Until about -- oh, Lord, I -- uh, about a month  
18 before I left Tucson, I moved from the trailer court close to  
19 where Barry lives out to the desert, and that's about the time  
20 our visits became less and less frequent because of the  
21 distance.

22 So he indicated that he moved out of the Desert Vista  
23 Trailer Park into the desert?

24 A. Yes.

25 Q. So he was obviously not living in the trailer park when

1 Rachel was suffering the abuse in April of 1994, correct?

2 A. Correct.

3 Q. Do you recall that Angela had problems with Zoly and began  
4 dating Barry Jones in early of 1994?

5 A. Yes.

6 Q. In April of 1994, Angela and her children, Rebecca,  
7 Jonathan and Rachel, moved in with Barry Jones.

8 A. Yes.

9 Q. And Angela's sister Amanda described it as a "filthy, messy  
10 hovel"?

11 A. I don't remember that, but if she did she was right.

12 Q. This would be Exhibit 66, 4902. Right down there at the  
13 middle. This is the interview of Amanda Gray. The police  
14 interview.

15 THE COURT: What date?

16 MR. BRACCIO: Yeah.

17 BY MR. BRACCIO:

18 Q. And she indicated it's just -- she said the court reporter  
19 wrote it down as "hobble," but it's --

20 THE COURT: Did you give the date?

21 MR. BRACCIO: I'm sorry.

22 BY MR. BRACCIO:

23 Q. This was her interview on May 2nd, 1994, correct?

24 A. Yes.

25 Q. And she had described it as a "filthy hovel"?

1 Question: No, I haven't yet. Answer: It's just a hobble.

2 You know, I mean, it's just....

3 And the detective asked her: And what do you mean by

4 "hobble"? It's a mess or it's just in the bad area or what?

5 Answer: It's in a bad area. It's a filthy mess. It's tiny,

6 it's falling apart, it's filthy. It's -- I mean, I'm sure

7 everybody will go out and look at it.

8 Correct?

9 A. Yes.

10 Q. Do you recall a woman by the name of Joyce Richmond?

11 A. Yes.

12 Q. Do you recall that she had several aliases in this case?

13 A. I think I remember one of them at least.

14 Q. Which one was that?

15 A. Was that Alice Knight?

16 Q. Correct. Alice Knight and Rose or Rosie?

17 A. Yes.

18 Q. Do you recall who she was?

19 A. I know she was at least a friend of Mr. Jones, maybe a

20 girlfriend.

21 Q. You do recall that she was his girlfriend?

22 A. Yes.

23 Q. Do you recall that she had a daughter named Alisha

24 (phonetic)?

25 A. Yes.

1 Q. And that she moved back from Montana in April of 1994 and  
2 moved in with her mother Patty in the trailer park?

3 A. I don't exactly remember that.

4 Q. Do you recall that you interviewed Joyce?

5 A. I know I did. I don't exactly recall it, but I know I did.

6 Q. 1341. Line 11.

7 And in your interview, you asked her: Well, when you  
8 say -- you asked her at Line 4: Okay, can you give me an idea  
9 about how often you would see Barry Jones? And she indicated  
10 every day. Correct?

11 A. Yes.

12 Q. And you said: In what time frame? She says: Well, when  
13 you say every day, what are you talking about? Like April? Or  
14 are you talking about months before that? She answers: Since  
15 I came back from Montana, every day. Correct?

16 A. Yes.

17 Q. And you asked her when was that that you came back? She  
18 said: April, I think. Correct?

19 A. Yes.

20 Q. You had asked her: Okay, and where were you and your  
21 daughter during that time, if you know? She answered: Alisha  
22 stayed at our house because she was going to stay there with  
23 Patty in case Laura had to run also. Correct?

24 A. That's what she said.

25 Q. So Alisha and her mother, Joyce, moved back in with her

1 mother, Patty, in the trailer park, correct?

2 A. Yes.

3 Q. And she saw Barry Jones every day during that time that she  
4 was there.

5 A. That's what she said, yes.

6 Q. Do you recall that Alisha said that she only saw Rebecca,  
7 Johnny and Rachel three or four times during that month before  
8 Rachel's death and only for a couple minutes each time?

9 A. I don't remember.

10 Q. This is Exhibit 1, 1341. This is the same interview that  
11 you did with Joyce.

12 I'm sorry. It's 1457.

13 Do you recall that you interviewed Alisha as well?

14 A. I don't recall it, but I see that this is a transcript.

15 Q. You asked: How many times do you think you've met them?  
16 She indicated three or four.

17 A. Yes. I don't know who "them" is. I don't know who she was  
18 talking --

19 Q. Right there at Line 23, this is Bates Number 1456, in that  
20 same interview you asked: Did you ever meet her children? She  
21 has three children, Becky, Johnny and Rachel. She indicated  
22 yeah. You asked her: How many times do you think you've met  
23 them? She answered three or four. You asked: Did you ever  
24 spend any amount of time with them or did you just see them at  
25 the trailer? She answered: I would just go in and they'd come

1 up and just talk to me for a couple minutes.

2 Correct?

3 A. Yes.

4 Q. You knew that Barry Jones was driving a yellow van that  
5 belonged to his twin brother, Larry, correct?

6 A. I remember the yellow van, I don't remember that it  
7 belonged to Larry.

8 Q. Detectives interviewed Larry -- let's pull up Exhibit 66.  
9 The police interview with Larry Jones.

10 This is a police interview of Larry Jones, Barry Jones'  
11 twin brother, on May 2nd, 1994, correct?

12 A. Yes.

13 Q. This indicates that Larry Jones let Barry Jones borrow his  
14 van, correct?

15 A. Yeah, it says -- they asked: Who drives the van right now?  
16 Excuse me. He says: My brother's in charge of the van.

17 Q. Go one up. 265. Right there.

18 Do you recall that that's the van?

19 A. When I can see the inside of it, I can tell. Otherwise, I  
20 probably wouldn't recognize it.

21 Q. Do you recall that Barry told the kids that they were not  
22 allowed to play in the van because it didn't belong to him?

23 A. I don't remember the part about it not belonging to him,  
24 but I remember that he told the kids they couldn't play in the  
25 van.



1 Q. A number of witnesses interviewed by the police at the  
2 trailer park confirmed that they had never seen any kids  
3 playing in the van. Do you recall that?

4 A. I don't remember.

5 Q. These are police reports dated May 2nd, 1994. Right there,  
6 you see Mack MacCloud?

7 A. Yes.

8 Q. Stated that he had only lived in the park for about a year  
9 and didn't really know anyone. I asked him if he had ever  
10 noticed kids in the neighborhood being allowed to play inside  
11 the vehicles, and he stated, no, he had never seen that.

12 A. Yes.

13 Q. 5108. This is a continuation of that police report.

14 Here is Bob Dresbach. He states that he had lived in the  
15 park for about 12 years and has known Barry for that length of  
16 time. When asked if he had ever seen children play in any type  
17 of vehicle, he stated no.

18 A. Yes.

19 Q. (Reading) I asked if he knew what type of vehicle Barry  
20 drives and he said it was a yellow van. And when asked if he  
21 had ever seen children playing in that van, he said no.

22 Correct?

23 A. Yes.

24 Q. Do you recall that Angela Gray also said the kids never  
25 played in the van?

1 A. I don't, I don't recall.

2 Q. Exhibit 1. Bates Number 532. We'll get the date of this  
3 interview.

4 So this is an undated interview.

5 Angela Gray was actually interviewed, I believe, all three  
6 times on May 2nd, 1994, do you recall that?

7 A. I don't recall.

8 Q. Let's go to 532. Lines 20 through 21.

9 Detectives asked Angela Gray if it was common for children  
10 to play in his work van, and Angela Gray told detectives --  
11 Detective Pesquiera here: No. No. He never -- I mean, that I  
12 know of, he never has before. Correct?

13 A. Yes.

14 Q. Alisha, Joyce's daughter, who we spoke about a moment ago,  
15 she also said no one ever played in the van. Do you recall  
16 that?

17 A. I don't remember.

18 Q. Exhibit 1, 1495.

19 THE COURT: The date of the interview is?

20 MR. BRACCIO: Yeah. Thank you, Your Honor.

21 BY MR. BRACCIO:

22 Q. The date of the interview for this is May 2nd, 1994,  
23 correct?

24 A. Yes.

25 Q. Go down to 96.

1 Detectives asked Alisha: Do you know if they play in the  
2 van often? And she said: Um, no.

3 Correct?

4 A. Yes.

5 Q. Joyce said that Barry Jones kept them out of the van  
6 because there were tools in there, correct?

7 A. That sounds familiar.

8 Q. And Barry himself told detectives that no kids had ever  
9 played in his van before, correct?

10 A. I don't remember.

11 Q. Do you recall that Barry Jones was interviewed by police on  
12 May 2nd, 1994?

13 A. Yes.

14 Q. This is Exhibit 66. Bates Number 5321. This is a police  
15 interview of Barry Jones. Right there.

16 The question asked: Do you ever -- do you ever let the  
17 kids play in the van before? They've never wanted to before.  
18 The opportunity never arose.

19 Correct?

20 A. Yes.

21 Q. Do you recall that Zoly came by Barry Jones' trailer to see  
22 Rachel for her birthday in April, just after they had moved  
23 into Barry Jones' trailer?

24 A. I don't remember that.

25 Q. Exhibit 66, Bates 5030. This is an interview of Alisha

1 Richmond, Joyce Richmond's daughter, on May 2nd, 1994.

2 Scroll up. Right there.

3 A2 of this is her mother, Joyce Richmond, who was also  
4 present at the interview. Do you recall that?

5 A. I don't recall that.

6 Q. Scroll up to the first page of that. Right there.

7 So A is Alisha Knight, A2 is Alice Knight, and then the  
8 detectives.

9 A. Yes.

10 Q. So Joyce responds: He got in a fight with Zoly. Angela's  
11 ex, I mean? Answer: Rachel's dad. And the detectives asked  
12 about when was that? Joyce responded about a month or so ago,  
13 when they first moved in, when Angela first moved in with  
14 Barry.

15 Correct?

16 A. Yes.

17 Q. And that, during this fight, Zoly pulled some of Barry's  
18 hair out.

19 A. Yes.

20 Q. Go to 5208. This is Exhibit 66. This is the police  
21 interview, the second police interview of Angela Gray, on May  
22 2nd, 1994.

23 Angela Gray is telling detectives about this fight, and she  
24 indicates: I mean, I saw him in -- when him and Zoly got into  
25 that fight that one day. And, I mean, he's a little guy, but

1 he had Zoly down in like two seconds.

2 Correct?

3 A. Yes.

4 Q. Do you recall that Joyce told police that Zoly didn't come  
5 around after that fight?

6 A. I don't remember that.

7 Q. This is Exhibit 1, Bates 1500. Again, this is the  
8 interview of Joyce Richmond on May 2nd, 1994.

9 After their discussion of the fight, the detective asked:  
10 And you haven't seen Zoly come by at all? No, he was supposed  
11 to come by for Rachel's birthday. I don't know if he did. I  
12 know her birthday's been in the last month.

13 Correct?

14 A. Yes.

15 Q. Now, during this month that they lived there, do you recall  
16 that Angela told Detective Pesquiera that Barry took Rachel  
17 alone anywhere from four to six times during that month?

18 A. I don't exactly remember that, but I remember something  
19 about him taking Rachel with him.

20 Q. Okay. This is Exhibit 66, Bates Number 5195, from the  
21 second police interview of Angela Gray on May 2nd, 1994. At  
22 the bottom:

23 So how long has Barry had contact with Rachel? We started  
24 dating in February, and she's pretty much always with me. But  
25 she's been with him alone. Not very often. There's been like

1 four or five times that they've actually -- you know, like,  
2 he's actually gone somewhere with her that's just been the two  
3 of them.

4 Correct?

5 A. Yes.

6 Q. Do you recall that Larry Jones, Barry's twin brother, also  
7 told detectives that Barry brought Rachel over two to five  
8 times alone, especially when he was arguing with Angela?

9 A. I don't remember that.

10 Q. Exhibit 66, Bates 5471.

11 This is the May 2nd, 1994 interview with Larry Jones,  
12 correct?

13 A. I can't tell that. But if that's --

14 Q. Yeah, this is, yeah, the May 2nd, 1994 police interview  
15 with Larry Jones. He indicated: Barry would bring Rachel over  
16 to my house. He brought her over to my house anywhere from two  
17 to five times. The detectives asked: So would he be alone  
18 with her there? Would he be -- would he be alone? He  
19 indicated he would be alone with her or he would have his buddy  
20 Ron with him.

21 Correct?

22 A. Yes.

23 Q. Let's talk about Rachel's health during that month that she  
24 lived with Barry Jones. Do you recall that Angela told you  
25 that she hadn't bathed Rachel in three weeks to a month?

1 A. I don't remember that.

2 Q. This is Angela Gray's second police interview on May 2nd,  
3 1994.

4 I'm sorry. That was my mistake. It's Bates Number 5193.

5 Angela indicated: Since the last time I gave her a bath,  
6 three weeks, a month. Correct?

7 A. Yes.

8 Q. And Detective Pesquiera asked about any history of issues  
9 with Rachel's private parts. Correct?

10 A. Yes.

11 Q. And Angela denied that there were any issues?

12 A. Yes, she denied it.

13 Q. Angela admitted that she had only spanked Rachel  
14 approximately three times on the butt in her entire life.  
15 Correct?

16 A. I don't remember that.

17 Q. 5197 at the bottom.

18 A. Yes. I'm sorry. They were asking about the 11-year-old  
19 there.

20 Q. Actually, I think they're indicating to Rachel, and she  
21 said no, indicating she doesn't cause any -- she did not cause  
22 any of the injuries to Rachel. She says: The only child of  
23 mine that I've ever slapped, spanked, or anything like that  
24 would be Becky. I mean, I've never -- and she says: The  
25 11-year-old? Yeah. She said: I've never -- I think maybe

1 three times in her entire life have I ever swatted Rachel on  
2 the butt. She's never needed it.

3 A. Yes.

4 Q. She indicated that because Rachel was whiny, but otherwise  
5 a really good child. Do you recall that?

6 A. I don't.

7 Q. Question: She's real ti- -- she's real tiny, small little  
8 thing. So I know she was really tiny. Question: She'd be  
9 real easy to -- to kind of handle as far as if you wanted to  
10 hurt her. The answer is she's -- she's never needed it. She's  
11 never -- she's never really been bad. The worst thing she does  
12 is she tends to whine. Correct?

13 A. Yes.

14 Q. Now, a month before her death, Angela stated that she heard  
15 Rachel had fallen off a clothesline and was slightly injured.  
16 Do you recall that?

17 A. No.

18 Q. This is Angela's third police interview on May 2nd, 1994.  
19 Exhibit 1, Bates Number 536, at Line 7.

20 (Mr. Braccio speaking with Mr. Vidal)

21 THE COURT: How much longer do you have with this  
22 witness?

23 MR. BRACCIO: Quite a bit.

24 THE COURT: Can you put that into terms of time for  
25 me?



1 MR. BRACCIO: Probably three hours. Four hours.

2 THE COURT: Three?

3 MR. BRACCIO: Mmm-hmm.

4 THE COURT: Ms. Bowman, what's your schedule tomorrow?

5 THE WITNESS: I know that they asked me to clear the  
6 morning, so I cleared my morning calendar.

7 THE COURT: My question to counsel is can we conclude  
8 with this witness by lunch tomorrow?

9 MR. BRACCIO: I certainly hope so, Your Honor.

10 THE COURT: That's....

11 MR. BRACCIO: Yes. Yes, we can.

12 THE COURT: Mr. Sandman, you still believe your prior  
13 estimate is correct?

14 MR. SANDMAN: As to the length of the hearing? Or the  
15 ability to get --

16 THE COURT: No, I haven't gotten there yet.

17 MR. SANDMAN: At this time --

18 THE COURT: As to the length of your redirect.

19 MR. SANDMAN: I don't see much redirect at this point,  
20 Judge.

21 THE COURT: Okay.

22 MR. SANDMAN: I'm sorry, Judge. I had had Dr. Keen  
23 scheduled for 9:00 a.m. tomorrow. I can put off --

24 THE COURT: We can't have two witnesses on at the same  
25 time.

1 MR. SANDMAN: I could put him off 'til maybe after  
2 lunch, but he's from Phoenix, and I've got to get him in and  
3 out of here tomorrow.

4 THE COURT: How long is he?

5 MR. SANDMAN: I'm sorry?

6 THE COURT: How long is he?

7 MR. SANDMAN: Well, we have about an hour of direct,  
8 but I don't know whether there's some plan to examine him for  
9 six or seven hours.

10 MS. GARD: No, Judge. Dr. Keen may be an hour of  
11 cross, at most.

12 MR. SANDMAN: So we should be able to get him done.

13 THE COURT: My suggestion is that we start at 8:30  
14 tomorrow morning with Judge Bowman, and we're going to finish  
15 by lunchtime. So you need to --

16 MR. BRACCIO: Sure.

17 THE COURT: -- frame your questions in such a fashion  
18 that we can finish by lunchtime.

19 This is probably an appropriate time to break, so we're  
20 going to break for the day. We'll start at 8:30 tomorrow  
21 morning. Judge Bowman, we'll finish with you by lunchtime.

22 THE WITNESS: Thank you.

23 THE COURT: Then we'll take up Dr. Keen after lunch.

24 All right? All right. Thank you, very much. We'll be at  
25 recess. (Off the record at 4:42 p.m.)

C E R T I F I C A T E

I, A. TRACY JAMIESON, do hereby certify that I am  
duly appointed and qualified to act as Official Court Reporter  
for the United States District Court for the District of  
Arizona.

I FURTHER CERTIFY that the foregoing pages constitute  
a full, true and accurate transcript of the proceedings  
contained herein, held in the above-entitled cause on the date  
specified therein, and that said transcript was prepared by me.

Signed in Tucson, Arizona, on the 17th day of  
November, 2017.

s/A. Tracy Jamieson  
A. Tracy Jamieson, RDR, CRR